

Mildred C. Richardson)
et al.,) In the
Plaintiff) Circuit Court
vs.) For
Baltimore City
Philip Morris, Incorporated,) Case No.:
et al.,) 96145050/CE212596
Defendant) VOLUME I

Deposition of CLIFFORD H. GOLDSMITH,
taken on Monday, October 5, 1998 at 10:02 a.m.,
at the law offices of Arnold & Porter, 399 Park
Avenue, New York, New York 10022 before E. Duane
Smith, RPR-CRR, Notary Public.

Reported by:
E. Duane Smith, RPR-CRR

<p>Page 2</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 GARY IGNATOWSKI, ESQUIRE</p> <p>4 JOSHUA J. KASSNER, ESQUIRE</p> <p>5 LAW OFFICES OF PETER G. ANGELOS, P.C.</p> <p>6 One Charles Center</p> <p>7 100 North Charles Street</p> <p>8 Baltimore, Maryland 21201</p> <p>9 (410) 649-2086</p> <p>10 On Behalf of the Plaintiff</p> <p>11 State of Maryland</p> <p>12</p> <p>13 MARC Z. EDELL, ESQUIRE</p> <p>14 EDELL & ASSOCIATES</p> <p>15 1776 On The Green</p> <p>16 Morristown, New Jersey 07960</p> <p>17 (908) 605-1776</p> <p>18 On Behalf of the Plaintiff</p> <p>19</p> <p>20</p> <p>21</p>	<p>Page 5</p> <p>1 Q. When did you retain personal counsel?</p> <p>2 A. Oh, I would say a few weeks ago.</p> <p>3 Q. Are you paying for personal counsel?</p> <p>4 A. No. I'm not.</p> <p>5 Q. Who is paying for it?</p> <p>6 A. Philip Morris is paying for it.</p> <p>7 Q. Was it recommended to you that you do</p> <p>8 retain personal counsel?</p> <p>9 A. Yes.</p> <p>10 Q. Who made that recommendation?</p> <p>11 A. My lawyer.</p> <p>12 Q. Who was your lawyer?</p> <p>13 A. Philip Morris' lawyer.</p> <p>14 Q. Who was that?</p> <p>15 A. I forget his name. I think it was --</p> <p>16 I'm afraid I can't give you his name right now.</p> <p>17 Q. An in-house attorney?</p> <p>18 A. Yes.</p> <p>19 Q. Mr. Wall?</p> <p>20 A. Yes. That's right.</p> <p>21 VIDEO OPERATOR: I'm sorry to</p>
<p>Page 3</p> <p>1 APPEARANCES (CONTINUED)</p> <p>2</p> <p>3 DEANE J. MAUNEY, ESQUIRE</p> <p>4 MURRAY GARNICK, ESQUIRE</p> <p>5 ARNOLD & PORTER</p> <p>6 399 Park Avenue</p> <p>7 New York, NY 10022</p> <p>8 (212) 715-1000</p> <p>9 On Behalf of the Defendant</p> <p>10</p> <p>11 WILLIAM H. DEANEY, ESQUIRE</p> <p>12 FREDERICK R. HAFETZ, ESQUIRE</p> <p>13 GOLDMAN & HAFETZ</p> <p>14 500 Fifth Avenue</p> <p>15 New York, New York 10110</p> <p>16 (212) 997-7400</p> <p>17 On Behalf of the Witness</p> <p>18 Clifford H. Goldsmith</p> <p>19 Also present:</p> <p>20 John Bernstein, Videographer</p> <p>21</p>	<p>Page 6</p> <p>1 interrupt. Mr. Goldsmith, you are not really</p> <p>2 coming through. I think your coat is covering</p> <p>3 your microphone.</p> <p>4 THE WITNESS: How about that.</p> <p>5 Q. Just so we were clear, Mr. Goldsmith,</p> <p>6 as I said today, there was some problem with your</p> <p>7 voice level.</p> <p>8 You have told us that you are</p> <p>9 represented by personal counsel?</p> <p>10 A. Yes. I am.</p> <p>11 Q. Your personal counsel is being paid by</p> <p>12 Philip Morris?</p> <p>13 A. That's correct.</p> <p>14 Q. That it was recommended to you by</p> <p>15 in-house counsel at Philip Morris, Mr. Wall, that</p> <p>16 you go out and retain personal counsel; is that</p> <p>17 correct?</p> <p>18 A. That's correct.</p> <p>19 Q. You did so two weeks ago?</p> <p>20 A. I don't -- no, a little more than that.</p> <p>21 Q. You know that Mr. Wall, his deposition</p>
<p>Page 4</p> <p>1 PROCEEDINGS</p> <p>2 Whereupon,--</p> <p>3 VIDEO OPERATOR: We are on the record</p> <p>4 and the time is 10:02 a.m. My name is John</p> <p>5 Bernstein, videographer for Certified Video</p> <p>6 Productions, Inc., 132 Franklin Corner Road,</p> <p>7 Lawrenceville, New Jersey.</p> <p>8 Will the court reporter please swear</p> <p>9 the witness.</p> <p>10 CLIFFORD GOLDSMITH,</p> <p>11 being first duly sworn to tell the truth, the</p> <p>12 whole truth, and nothing but the truth, testified</p> <p>13 as follows:</p> <p>14 EXAMINATION BY MR. EDELL:</p> <p>15 Q. Mr. Goldsmith, my name is Marc Edell.</p> <p>16 You are here pursuant to a subpoena, and I see</p> <p>17 that you have a number of attorneys flanking you</p> <p>18 to your right and left.</p> <p>19 Have you retained personal counsel to</p> <p>20 represent you with respect to this proceeding?</p> <p>21 A. Yes. I have.</p>	<p>Page 7</p> <p>1 was taken in this matter?</p> <p>2 A. No. I do not.</p> <p>3 Q. Did he tell you why you should go and</p> <p>4 retain personal counsel?</p> <p>5 A. No.</p> <p>6 Q. He just called you up on the phone and</p> <p>7 said, Mr. Goldsmith?</p> <p>8 A. I just felt it was better to have</p> <p>9 personal counsel.</p> <p>10 Q. In the subpoena that was served on you,</p> <p>11 you were asked to bring certain documents.</p> <p>12 A. There was no subpoena served on me.</p> <p>13 Q. No subpoena served on you. Pursuant to</p> <p>14 a deposition notice?</p> <p>15 A. I did not get a deposition notice.</p> <p>16 Q. No one gave you that?</p> <p>17 A. No.</p> <p>18 Q. Mr. Wall did not discuss it with you?</p> <p>19 A. No, nobody gave me any deposition</p> <p>20 notice.</p> <p>21 Q. So no one told you that you were</p>

<p>Page 8</p> <p>1 requested to bring certain documentation? 2 A. No. 3 Q. Who made arrangements for your 4 attending this deposition? 5 A. Mr. Hafetz and Mr. Wall, no, Mr. Hafetz 6 actually made the arrangements. 7 Q. He didn't tell you there was a 8 deposition notice asking you to produce 9 documents? 10 A. No. He did not. 11 MR. EDELL: You didn't receive a copy, 12 sir? 13 MR. HAFETZ: I think Philip Morris has a 14 copy. 15 MR. GARNICK: You might want to ask him 16 if he has seen a schedule of documents to be 17 produced. 18 MR. EDELL: I have no way of defining 19 it. We sent a deposition notice which we've 20 marked as Plaintiff's Exhibit 14108, and 21 Mr. Garnick is trying to help us out, I believe.</p>	<p>Page 11</p> <p>1 time I was working at Philip Morris, I might have 2 had some of these documents, but not since I 3 ceased working there. 4 Q. You don't remember whether you have 5 documents related to the Council for Tobacco 6 Research, you don't remember having documents 7 relating to the Tobacco Institute? 8 A. I don't recollect exactly what kinds of 9 documents I had. I have no idea. It is 14 years 10 ago. 11 Q. You do know what the Council for 12 Tobacco Research is? 13 A. Yes. I do. 14 Q. You do know what the Tobacco Institute 15 was? 16 A. Yes. I do. 17 Q. You remember attending meetings at both 18 of those entities, correct? 19 A. Would you repeat that, please? 20 Q. You remember attending meetings at the 21 Council for Tobacco Research; is that correct?</p>
<p>Page 9</p> <p>1 by referring us to the schedule of documents 2 which appears at page three, Mr. Goldsmith 3 Did you see that schedule of 4 documents? 5 A. I have no such documents. I am 6 responding to number one. 7 Q. Let me ask you first: Did you see this 8 schedule? 9 A. No. I did not see this. 10 Q. No one discussed it with you? 11 A. No. 12 MR. EDELL: I would like some response 13 from either his personal counsel or counsel for 14 Philip Morris as to why the schedule of documents 15 requested in the deposition notice to this 16 witness was not gone through with the witness in 17 advance of the deposition. 18 MR. GARNICK: Mr. Edell, two points. 19 First, I am functioning today both as counsel for 20 Philip Morris and for Mr. Goldsmith as 21 Mr. Goldsmith's personal counsel. I wanted to</p>	<p>Page 12</p> <p>1 A. Yes. 2 Q. You remember attending meetings at the 3 Tobacco Institute, correct? 4 A. Yes. 5 Q. You were on the board of directors of 6 the Council for Tobacco Research? 7 A. For a certain period of time only, and 8 I don't recollect for how long. 9 Q. I'm not going to talk with you on that 10 point, but you were a member of the board of 11 directors? 12 A. I think I was. 13 Q. You did attend board meetings of that 14 entity, correct? 15 A. Yes, I did. 16 Q. You participated in decision making for 17 the Council for Tobacco Research, correct? 18 A. As pertained to budgets and matters of 19 that nature, yes. 20 Q. You also made decisions with respect to 21 hiring of the administrative people and the</p>
<p>Page 10</p> <p>1 correct that point. 2 Second, we have gone through the 3 substance of our schedule with Mr. Goldsmith. 4 MR. EDELL: So he is not testifying 5 correctly, that's your position? 6 MR. GARNICK: No. That is not my 7 position. I think you asked him if he has read 8 that schedule. 9 MR. EDELL: I did did anybody also 10 discuss that with you. He said no to that 11 question also. 12 MR. GARNICK: I don't know if he read it 13 or gone through it in a way that he would 14 recognize it as discussing that particular 15 schedule. Why don't you go through the requests? 16 A. I just have none of these papers in my 17 possession. 18 Q. Did you at any point in time have 19 documents that were responsive to the schedule in 20 your possession? 21 A. I don't recollect whether during at the</p>	<p>Page 13</p> <p>1 scientific director for the Council for Tobacco 2 Research, correct? 3 A. I don't recollect that. 4 Q. You don't remember that being part of 5 your responsibilities, sir? 6 A. No. 7 Q. Why don't you tell us what you remember 8 your responsibilities were at the Council for 9 Tobacco Research? 10 A. I simply remember attending meetings 11 and hearing reports and discussing budgets. 12 Q. That's all you remember? 13 A. That's all I remember. 14 Q. You don't remember any discussions 15 respecting appointment of different members, 16 administrative personnel at the Council for 17 Tobacco Research, correct? 18 A. No. I do. 19 Q. Do you remember the issue of cigarette 20 smoking and health being discussed at any of the 21 board meetings?</p>

<p>Page 14</p> <p>1 A. That's what CDR was all about. 2 Q. About cigarette smoking and health? 3 A. That's correct. 4 Q. Was it about public relations? 5 A. I don't remember public relations being 6 part of it. 7 Q. You don't remember that? 8 A. No. I do not. 9 Q. As a matter of fact, when you were 10 interviewed by one of your lawyers, Mr. Allender, 11 you remember Mr. Allender from Shook, Hardy & 12 Bacon? 13 A. No, I do not. 14 Q. You discussed with him an interview you 15 had with Alix Freedman from the Wall Street 16 Journal, you remember that? 17 A. No. I do not. 18 Q. You don't remember that either? 19 A. I do not. I remember meeting Alix 20 Freedman after I retired. 21 Q. Correct. You remember that she was a</p>	<p>Page 17</p> <p>1 that correct, sir? 2 A. Yes. It is. 3 MR. GARNICK: Let me interrupt for just 4 a moment. Philip Morris does object to the use 5 of this document on the grounds of 6 attorney-client privilege. 7 We are willing to go ahead as we did in 8 the other depositions, pursuant to the 9 stipulation that our willingness to go ahead will 10 not be construed as a waiver. 11 I think that is the same stipulation 12 that was in place in connection with the other 13 depositions. Is that agreeable? 14 MR. EDELL: If in fact you are entering 15 into the same stipulation we did in the Weissman 16 deposition, which I was present, that's fine with 17 me. 18 MR. GARNICK: Okay. Thank you. 19 Q. The subject of this memorandum, 20 Mr. Goldsmith, is Alix Freedman interview of 21 Cliff Goldsmith, is that correct?</p>
<p>Page 15</p> <p>1 reporter for the Wall Street Journal? 2 A. Yes. I remember that. 3 Q. You remember she asked you questions 4 about the Council for Tobacco Research? 5 A. No. I don't remember that. 6 Q. Do you remember what you talked about 7 with her? 8 A. No. I really don't. 9 Q. How many times within the last decade 10 have you been interviewed by a newspaper? 11 A. I don't remember any interviews by 12 newspapers. I don't remember whether I -- 13 Q. By a reporter, I'm sorry, for a 14 newspaper? 15 A. I don't even remember that when I met 16 Ms. Freedman that it was an interview for a 17 newspaper. I just remember her coming to my 18 office and talking to me, but I, that's the only 19 time I remember talking to any reporter. 20 Q. So you can only remember once in the 21 last decade, for example, that you met with a</p>	<p>Page 18</p> <p>1 A. Clifford Goldsmith. 2 Q. It says Cliff. 3 A. Yes. That's an abbreviation I don't 4 care for. 5 Q. I'm just reading what's on the 6 document? 7 A. I'm only mentioning it for the record. 8 Q. I will only call you Mr. Goldsmith, not 9 Clifford. 10 A. Well, you can call me Clifford, that 11 would be all right, too. 12 Q. Am I correct though that the words used 13 in the subject of the memorandum is "Alix 14 Freedman interview of Cliff Goldsmith"? 15 A. Yes. I understand that. 16 Q. Would you please read the document and 17 see if it refreshes your memory that you did, in 18 fact, discuss with Ms. Freedman the issue of the 19 Council for Tobacco Research and your knowledge 20 concerning that entity? 21 A. You just want me to read the one you</p>
<p>Page 16</p> <p>1 reporter to discuss your work on the Council for 2 Tobacco Research? 3 A. I don't remember discussing that work 4 with her. 5 Q. Let me see if I can refresh your 6 memory. P-13532. 7 I will show you a document marked as 8 Plaintiff's Exhibit 13532. 9 Here you go, counsel, that's a copy for 10 you. 11 You recognize that to be the letterhead 12 of Philip Morris, Mr. Goldsmith? 13 A. Yes. I do. 14 Q. It indicates on the first page of the 15 document that it is from Chuck Wall, that's the 16 same in-house lawyer that told you to retain 17 outside counsel, correct, personal counsel? 18 A. Suggested it. 19 Q. Suggested it, right. 20 A. Yes. 21 Q. And it is dated October 20, 1992. Is</p>	<p>Page 19</p> <p>1 quoted? 2 Q. Yes. 3 A. I don't remember any more than I told 4 you. I really have no recollection of what she 5 said and what I said to her. 6 Q. This doesn't jog your memory? 7 A. No. It does not. 8 Q. You certainly remember speaking with 9 her, correct? 10 A. I do remember speaking with her. 11 Q. You don't remember telling her that you 12 didn't know who Len Zahn was? 13 A. No. I don't remember. 14 Q. You know who Len Zahn was? 15 A. I don't remember who Len Zahn was. 16 Q. You don't remember that he was public 17 relations counsel for the Council for Tobacco 18 Research? 19 A. Mr. Edell, you have to understand. It 20 is many years ago that all this took place. I'm 21 not being evasive. I just don't remember.</p>

<p>Page 20</p> <p>1 Q. The name doesn't -- 2 A. And I'm 79 years old. Your memory is 3 not all that great at that stage of the game. 4 Q. I don't know you, you don't know me, 5 sir? 6 A. I want you to understand, I'm not being 7 evasive. When I say I don't remember, I don't 8 understand, that is a fact. 9 Q. So you have no reason then to take 10 exception with anything that is recorded in this 11 memorandum? 12 A. No. I do not. 13 Q. Right? 14 A. No. I don't remember it. 15 Q. You can only assume it is correct, if 16 he recorded it this way? 17 A. No. I do not assume it is correct. 18 Q. You have any reason to question the 19 accuracy of this memorandum? 20 A. I don't remember it. 21 Q. I'm asking you whether or not you have</p>	<p>Page 23</p> <p>1 Q. Is this reconstituted tobacco? 2 A. Yes. That's right. 3 Q. You say "made of smaller particles" 4 where did those particles come from? 5 A. They were by-products of production. 6 Q. When you say "by-products of 7 production", what do you mean? 8 A. It means, say, that if a machine, small 9 pieces would fall out during the manufacturing 10 process and you take those small pieces and 11 recombine them into a sheet. 12 Q. These would be, in other words, during 13 the manufacturing process, you use leaf tobacco, 14 correct? 15 A. Right. 16 Q. And during that process, there is a 17 residual that is left behind, small pieces of the 18 leaf? 19 A. Right. 20 Q. That don't make it into the cigarette, 21 right?</p>
<p>Page 21</p> <p>1 any reason to question the accuracy of the 2 memorandum? 3 A. I don't have a reason to question 4 excuse me, a reason to question its accuracy or 5 inaccuracy. I don't know. 6 Q. Okay. Do you remember when you first 7 joined Philip Morris? 8 A. Yes. 9 Q. When did you join Philip Morris? 10 A. I believe it was in 1954. 11 Q. And do you remember what your 12 responsibilities were in 1954? 13 A. I was in charge of tobacco sheet. 14 Q. How many years ago was that? 15 A. I guess at this stage of the game, 45 16 years ago. 17 Q. 45 years ago. And where were you 18 located 45 years ago? 19 A. In New York City. 20 Q. Where was your office? 21 A. In New York City.</p>	<p>Page 24</p> <p>1 A. Yes. 2 Q. They end up where, on the machines on 3 the floor? 4 A. Everywhere. 5 Q. Everywhere. And what they do is sweep 6 that together, correct? 7 A. I don't know what you mean, they 8 collect it. 9 Q. How do they collect it off the floor? 10 A. Well, they collect it -- it is in the 11 on the floor, usually in the machine. 12 Q. It is also on the floor? 13 A. Could have been some on the floor. 14 Q. So how do they -- 15 A. I don't think what's on the floor was 16 used in the sheet necessarily at all. 17 Q. Do you remember that? 18 A. No. I don't remember the details of 19 it. But I tell you that most of it was pieces 20 that were on the machine. 21 Q. You remember that specifically?</p>
<p>Page 22</p> <p>1 Q. Do you remember the address? 2 A. Yes. It was 100 Park Avenue. 3 Q. What floor were you on? 4 A. I think it was the fourth floor. 5 Q. Do you remember the names of any of the 6 individuals who had offices near you? 7 A. Near me at that time, no, I don't 8 remember. 9 Q. And what precisely were your 10 responsibilities? 11 A. I was in charge of deciding what kind 12 of tobacco sheet the company wanted to use and 13 then to build a plant that would manufacture that 14 sheet. 15 Q. When you say "what kind of sheet" what 16 do you mean, sir? 17 A. Well, there was a process that would 18 combine small particles of tobacco into a sheet 19 and then that sheet would be cut to be used in 20 addition to tobacco. 21 It was basically made of tobacco.</p>	<p>Page 25</p> <p>1 A. I do remember that specifically. 2 Q. You were working in the plants at the 3 time? 4 A. No. I was not. 5 Q. But you remember it specifically? 6 A. Well, I was a plant manager before of a 7 different plant. 8 Q. You were at Benson & Hedges, with 9 Mr. Cullman, right? 10 A. That's correct. 11 Q. You started there in 1945? 12 A. That's correct. 13 Q. Where was that located? 14 A. On Water Street in New York and later 15 on in Yonkers. 16 Q. What they would do is take all of this 17 left over, these leftover pieces and sort of 18 press them together, correct? 19 A. It is a little more complicated than 20 that. 21 Q. Well then tell us exactly what they</p>

<p>Page 26</p> <p>1 did. 2 A. The process involved, in the beginning, 3 it involved laying down a substrate, grinding up 4 the pieces of tobacco into a uniform size, and 5 then applying them to that substrate. 6 At a later time, the process was 7 changed so that there would be a solution was 8 formed of the fine pieces of tobacco, along with 9 a binder, and it would be cast on a sheet. 10 Q. There were other, I don't know how to 11 describe it, additives, that were used in the 12 reconstituted tobacco; is that correct? 13 A. Yes. 14 Q. Will you tell the jury some of the 15 additives that you recall being included in this 16 sheet of whatever the residual tobacco was? 17 MR. HAFETZ: Excuse me. What time 18 frame? 19 MR. EDELL: If you can tell us from 20 1954 forward. If it changed each year, please 21 tell us that also.</p>	<p>Page 29</p> <p>1 correct? 2 A. Right. 3 Q. And it says 1.1 percent phosphorus, is 4 that correct, under BL? 5 A. Yes. 6 Q. These are sheets used in cigarettes 7 manufactured by Philip Morris, correct? 8 A. That's correct. 9 Q. Then it also has a percentage for 10 ammonia, is that correct? 11 A. Yes. 12 Q. Did you do any testing to determine 13 whether or not when the ammonia is burned it 14 produced any by-products? 15 MR. HAFETZ: You mean he personally? 16 MR. EDELL: You have an objection to 17 the form? 18 MR. HAFETZ: I object to form. 19 MR. EDELL: Please just say it. 20 MR. HAFETZ: I object to the form. 21 MR. EDELL: I understand that. Now, can</p>
<p>Page 27</p> <p>1 THE WITNESS: I certainly wouldn't 2 remember how it change each year from 1954, 3 Mr. Edell. 4 MR. EDELL: I'm responding to your 5 attorney's question. 6 A. I understand that, you are asking me 7 for some highly technical information and trying 8 to answer it properly, it is not all that easy, 9 but I tell you, the final product that we ended 10 up with, we made the binder by using diammonium 11 phosphate to free the pectins in the stems and 12 mixed that with the tobacco, the sheet. 13 There was some flavorings used but I 14 can't tell you what they were because I don't 15 remember them. 16 Q. Is that your recollection, that at 17 least that -- what was it? 18 A. Diammonium phosphate. 19 Q. That has been in there as long as you 20 remember? 21 A. That is correct.</p>	<p>Page 30</p> <p>1 you answer the question. 2 MR. HAFETZ: If he understands it. 3 MR. EDELL: Are you suggesting that he 4 shouldn't understand it? 5 MR. HAFETZ: I'm not suggesting 6 anything. I'm objecting to the form. 7 Q. You don't have to say it. Go ahead, 8 Mr. Goldsmith? 9 A. Will you repeat the question? 10 Q. Yes. Are you aware of any research 11 performed by either you individually or at Philip 12 Morris to determine what by-products were given 13 off when the ammonia was burned as a cigarette 14 was smoked? 15 A. I don't recollect any. 16 Q. Are you familiar as to whether or not 17 ammonia in some circumstances is poisonous? 18 A. Not to my knowledge. 19 Q. You don't know understand any 20 circumstances that ammonia can be poisonous? 21 A. I don't know.</p>
<p>Page 28</p> <p>1 Q. Do you recall ammonia being added? 2 A. Diammonium phosphate is ammonia. There 3 is ammonia in diammonium phosphate. If you ask 4 me for the exact chemistry, I can't explain it. 5 But the ammonia in the tobacco sheet 6 comes from the diammonium phosphate. 7 Q. Okay. I'm going to show you a 8 document, maybe you can help us out with this, 9 it's Plaintiff's Exhibit 13906. 10 It is a memorandum that appears to be 11 from Dr. Wakeham to Mr. C.H. Goldsmith? 12 A. That's me. 13 Q. That's you, February 28, 1967. Is 14 that the date of it, sir? 15 A. Yes. 16 Q. Says additives to DAP-BL and DAP-RCB. 17 What do those initials mean? 18 A. One is BL for blended leaf and the 19 other one is the process which is the cast 20 process. 21 Q. This is reconstituted tobacco,</p>	<p>Page 31</p> <p>1 Q. Are you sophisticated when it comes to 2 the by-products of tobacco smoke? 3 A. No. I'm not sophisticated. 4 Q. Are you sophisticated with respect to 5 the issue of cigarette smoking and health? 6 A. Would you define that for me? 7 Q. Well, cigarette smoking and health may 8 be sort of a bad way to phrase it. Cigarette 9 smoking and disease. Are you familiar with the 10 relationship between cigarette smoking and 11 disease? 12 A. Well, I am familiar with the various 13 claims in the matter. 14 Q. So you are familiar with the -- 15 A. But I'm not a scientist in the area. 16 Q. In other words, you don't hold yourself 17 out to be knowledgeable like Dr. Wakeham, when it 18 comes to the relationship between cigarette 19 smoking and disease? 20 A. That's right. 21 Q. Is that correct? You would defer to</p>

<p>Page 32</p> <p>1 Dr. Wakeham on that issue? 2 A. I would look at his opinion. I would, 3 when you say "defer to him" I didn't believe that 4 necessarily everything Dr. Wakeham told me was 5 true. 6 Q. In other words, if he made a statement 7 regarding the relationship between cigarette 8 smoking and disease, you might not accept that, 9 even though you don't know a fraction of what he 10 knows about the subject? 11 A. That's correct. 12 Q. So if he thought that there was a 13 relationship between cigarette smoking and lung 14 cancer, for example, you might disagree with 15 that, correct? 16 A. I might. 17 Q. Even though you don't know a fraction 18 of what he knows; is that correct? 19 MR. HAFETZ: Objection to form. 20 Q. Is that correct, sir, about the 21 subject?</p>	<p>Page 35</p> <p>1 A. In 1954, I must have heard the term, 2 but none was done by Philip Morris at that time, 3 to my knowledge. 4 Q. As a matter of fact, none was done by 5 Philip Morris in-house for a long period of 6 sometime; is that correct? 7 MR. GARNICK: Objection to form. 8 MR. EDELL: Sir? 9 THE WITNESS: Would you repeat the 10 question, please? 11 Q. In fact, there was no biological 12 research done by Philip Morris for a long period 13 of time, correct? 14 MR. GARNICK: Objection to form. 15 A. What do you call long? 16 Q. Several decades? 17 A. I can't. I think you would need to be 18 more specific. I don't know about several 19 decades. 20 Q. Sir, you are aware of the agreement 21 within the industry, among the tobacco companies</p>
<p>Page 33</p> <p>1 A. I don't understand what you are saying. 2 Q. Even though you are not trained in the 3 area of cigarette smoking and health, correct? 4 A. Right. 5 Q. Even though you don't know half of what 6 Dr. Wakeham knows on the subject, is that 7 correct? 8 MR. HAFETZ: Objection. 9 A. I don't know what Dr. Wakeham knows on 10 the subject, so I don't know what half would 11 mean. 12 Q. You didn't work very closely with 13 Dr. Wakeham during the years you were at Philip 14 Morris? 15 A. I worked with him in certain areas. 16 Q. Certainly on the area of cigarette 17 smoking and health, you worked with him? 18 A. No. I didn't work with him on 19 cigarette smoking and health. 20 Q. You relied upon him on that issue, 21 correct, sir?</p>	<p>Page 36</p> <p>1 not to do biological research, at least in-house? 2 A. No. I'm not. 3 Q. You weren't aware of that? 4 MR. HAFETZ: Objection. 5 MR. GARNICK: Objection. 6 Q. You weren't aware of that? 7 A. No. 8 Q. No one told you about that? 9 A. No. 10 Q. Never heard it. 11 MR. HAFETZ: Continuing objection to 12 this line of questioning. 13 Q. Sir, you never heard it? 14 A. I heard it from my counsel. 15 MR. GARNICK: Objection. 16 MR. HAFETZ: Objection. 17 Q. What did he tell you? 18 MR. HAFETZ: Objection. 19 MR. EDELL: He just decided to tell us, 20 sir. He has waived whatever privilege now that he 21 told us that he heard it from you.</p>
<p>Page 34</p> <p>1 A. I accepted his data on it, yes. 2 Q. Who else within the Philip Morris 3 structure knew more about the relationship 4 between cigarette smoking and health than 5 Dr. Wakeham who is head of research and 6 development for Philip Morris? 7 A. Cigarette smoking and health was not 8 the area in which Philip Morris did any 9 research. 10 Dr. Wakeham didn't do research in the 11 area of cigarette smoking and health. That work 12 was done by the Council for Tobacco Research. 13 Q. In 1954 when you joined Philip Morris, 14 no research regarding cigarette smoking and 15 health was being done by Philip Morris, correct? 16 A. Not to my knowledge. 17 Q. Do you know what biological research 18 is? 19 A. Not to my knowledge. 20 Q. Never discussed that, never heard that 21 term?</p>	<p>Page 37</p> <p>1 MR. HAFETZ: Objection. Directing him 2 not to answer. 3 MR. EDELL: On what basis? 4 MR. HAFETZ: Attorney-client privilege. 5 Q. You remember that at several points in 6 time, Dr. Wakeham -- just so the jury 7 understands, Dr. Wakeham was the head of research 8 and development for Philip Morris? 9 A. Yes. He was. 10 Q. For how many years? 11 A. I don't remember. 12 Q. Was he there since you joined the 13 company? Was he there when you joined the 14 company? 15 A. I think he was, yes. 16 Q. And was he there when you left the 17 company? 18 A. No. 19 Q. When did he leave? 20 A. I don't remember the year. 21 Q. Was he there in the seventies?</p>

Page 38

1 A. I would think so.
2 Q. Do you know that he was there?
3 A. I said I would think so.
4 Q. We know that he was there in the
5 fifties, we know that he was there in the
6 sixties, we know that he was there in the
7 seventies, correct?
8 A. I think so.
9 Q. And he certainly was the person in
10 research and development who would be asking what
11 type of research they might be performing and
12 whether they would be receiving funding from the
13 corporation for that research, correct?
14 A. I don't understand your question. By
15 "that research" what are you talking about?
16 Q. Biological research, sir, the same
17 thing that your lawyer told you about, biological
18 research.
19 MR. HAFETZ: Objection.
20 THE WITNESS: Would you restate the
21 question, please?

Page 39

1 MR. EDELL: Yes.
2 Q. Do you remember that from time to time
3 Dr. Wakeham would approach the board of directors
4 and various executives and officers of Philip
5 Morris, to ask that he be permitted to perform
6 biological research?
7 A. Yes.
8 Q. And that in each instance, his requests
9 were rejected, do you remember that?
10 A. No.
11 Q. You don't remember that it was
12 concluded that to do biological research in-house
13 would be too risky for Philip Morris?
14 A. No.
15 Q. You don't remember that?
16 A. No.
17 Q. Would you tell the jury who Joseph
18 Cullman is?
19 A. He is the chairman of Philip Morris.
20 Q. That is Joseph Cullman, III?
21 A. That's right.

Page 40

1 Q. You worked with him for how many
2 years?
3 A. Oh, I guess close to 30 years, over 30
4 years, something like that.
5 Q. And he was, basically, the person who
6 ran Philip Morris for a long time, didn't he?
7 A. Yes. He did.
8 Q. Certainly in the 1960's, he was the one
9 who was calling the shots, correct?
10 A. Correct.
11 Q. And what was your position with Philip
12 Morris in 1969?
13 A. I was in charge of operations.
14 Q. Were you a corporate officer?
15 A. Yes. I was.
16 Q. Were you a member of the board of
17 directors?
18 A. I think I was.
19 Q. Would you have any reason to question
20 that now?
21 A. I don't remember exactly when I joined

Page 41

1 the board.
2 Q. Were you on the board of directors in
3 the sixties?
4 A. I think I was. As I said, I don't
5 remember the exact date.
6 Q. Let me see if we can do this in a way
7 that we can refresh your memory.
8 Did you review any documents preparing
9 for this deposition?
10 A. I didn't review them.
11 Q. They were discussed with you, though?
12 A. Yes.
13 Q. Your attorney discussed certain
14 documents with you?
15 A. Yes, he did.
16 Q. Told you that you might have to answer
17 questions about those documents?
18 A. That's correct.
19 Q. Suggested what you might be able to
20 respond to in response to questions like that?
21 A. No.

Page 42

1 Q. When you say your attorney, you are
2 talking about who, sir?
3 A. Both my counsel.
4 Q. Who are they?
5 A. Mr. Hafetz.
6 Q. Who else, Mr. Garnick?
7 A. Yes.
8 Q. They were present at the time you were
9 being prepared for this proceeding?
10 A. Yes. They were.
11 Q. I'm going to show you the first
12 document which is Plaintiff's Exhibit 13366.
13 This is a memorandum from Dr. Wakeham who we have
14 been discussing, right?
15 A. Yes.
16 Q. The date of it -- here you go, sir.
17 The date of it is what, November --
18 A. 1968.
19 Q. What's the month, sir, the date?
20 A. November 12, 1968.
21 Q. And it is a memorandum directed to you,

Page 43

1 C. H. Goldsmith, correct?
2 A. Yes, sir.
3 Q. The subject is need for biological
4 research by Philip Morris Research and
5 Development?
6 A. Yes.
7 Q. Did I read that correctly, sir?
8 A. Yes, sir.
9 Q. What was it in your responsibilities
10 that would bring Dr. Wakeham to send such a
11 memorandum to you?
12 A. I was chief of operations.
13 Q. And what relationship did that chief of
14 operations have to do with research and
15 development in the area of biological research?
16 A. Well, I was Dr. Wakeham's boss.
17 Q. Okay. So in the normal course, he
18 would be sending you a memorandum if he wanted to
19 do certain types of research; is that correct?
20 A. He might. He wouldn't send me a
21 memorandum every day.

<p>Page 44</p> <p>1 Q. Well, you would be the person though 2 who he would be addressing a memorandum like this 3 to? 4 A. Yes, he would. 5 Q. If he wanted to perform biological 6 research, correct? 7 A. Yes. He would. 8 Q. Would you take your time and review 9 this memorandum, sir. Have you reviewed this 10 previously? 11 A. No. Yes, sir. 12 Q. Now, this is a memorandum to you, as we 13 discussed from Dr. Wakeham, correct? 14 A. Correct. 15 Q. He is asking for permission from you to 16 do biological research, correct? 17 A. As I read this memorandum, he is 18 pointing out the need for it. He is not being 19 specific and saying what he wants to do at that 20 particular time. But, you know, I skimmed it, 21 but he pointed out the need for it.</p>	<p>Page 47</p> <p>1 from the Federal Government regarding their 2 investigation? 3 A. No. 4 Q. Do you remember what you did after you 5 received this memo from Dr. Wakeham in 1968, 6 asking for or suggesting at least that biological 7 research be started? 8 A. No. 9 MR. HAFETZ: Object. Give me a chance 10 to object. 11 Q. You don't remember what you did? 12 A. No. It is 30 years ago, Mr. Edell. 13 Q. That's why I am trying to jog your 14 memory, sir. 15 A. I know. But still 30 years ago, it is 16 hard to jog. 17 Q. Well, I'm going to do my best, all 18 right? 19 A. Yes, sir. 20 Q. Let me show you another memorandum that 21 was sent to you. This is dated November 15. It</p>
<p>Page 45</p> <p>1 Q. And on the second page of the document, 2 you still have it in front of you, sir? 3 A. Yes. 4 Q. The third full paragraph? 5 A. Right. 6 Q. You see where it says: "We have reason 7 to believe that in spite of previous arrangements 8 within the tobacco industry, at least some of the 9 major companies have been increasing biological 10 studies within their own facilities." 11 A. Correct. 12 Q. You see that? 13 A. Uh-huh. 14 Q. What previous arrangements do you 15 believe Dr. Wakeham to be referring to? 16 A. I don't recollect any such previous 17 arrangements. I don't know what he is referring 18 to. 19 Q. You have no idea; is that correct? 20 A. No. 21 Q. Are you aware that there is a criminal</p>	<p>Page 48</p> <p>1 seems to be a similar version of the November 12 2 document. 3 MR. HAFETZ: Will you just note the year 4 on that? You said November 15. What year? 5 THE WITNESS: 1968. 6 MR. EDELL: 1968. It is going to be 7 part of the record, counsel. 8 MR. HAFETZ: Okay. 9 MR. EDELL: I understand what you want 10 to do, but it is part of the record, so there 11 won't be any question of what the date is. All 12 the exhibits will be part of the record. 13 A. They are practically identical memos, I 14 don't quite understand. One is dated November 12 15 and the other one is dated November 15. A lot of 16 the things he fails to mention in one he mentions 17 in the other. Is there any particular reason why 18 you wished for me to read it again? 19 Q. Just to see if it jogs your memory any 20 more. 21 A. No. It doesn't.</p>
<p>Page 46</p> <p>1 investigation being conducted into the tobacco 2 industry? 3 A. Vaguely. 4 Q. Vaguely? 5 A. Yes. 6 Q. You know that the Federal Government is 7 looking into certain allegations relating to the 8 Council for Tobacco Research and Special 9 Projects? 10 A. No. I didn't know those details. 11 Q. Your lawyer didn't tell you about 12 that? 13 MR. HAFETZ: Objection. 14 Q. He did not? 15 MR. HAFETZ: Objection. Direct him know 16 to answer. 17 Q. How did you become aware that there was 18 a criminal investigation? 19 A. I think I read it in the newspapers or 20 on the Internet. I'm not sure. 21 Q. Have you had any contact with anybody</p>	<p>Page 49</p> <p>1 Q. It doesn't. Okay. We'll keep working 2 on it. I will show you a document which we have 3 marked as Plaintiff's Exhibit 13941. 4 This is several months after the 5 earlier memorandum. Correct? 6 A. Yes. 7 Q. And, again, it is another memorandum 8 from Dr. Wakeham to Mr. Goldsmith, correct? 9 A. Yes. 10 Q. Proposal for biological research 11 program? 12 A. Right. 13 Q. Updated from July 1, 1969. That is 14 what it says, sir? 15 A. Yes. It does. 16 Q. And then it says under summary we have 17 in a previous memorandum dated November 15, 1968? 18 A. Right. I read it. 19 Q. We have discussed that November 15 20 memorandum already, correct? 21 A. Right.</p>

<p>Page 50</p> <p>1 Q. And that November 15 memo is again 2 attached to this document, 13941 which is the 3 August 26, 1969 document, correct? 4 A. Could you repeat that? I didn't quite 5 follow you. 6 Q. Dr. Wakeham says that he has attached 7 the November 15, 1968, document to this updated 8 request, August 26, 1969, and, in fact, it 9 appeared as appendix one, correct? 10 A. You didn't give it to me again, did 11 you? 12 Q. Yes. 13 A. It is not attached to this here, is 14 it? Oh, yeah, here it is. Okay. 15 Q. Okay. 16 A. All right. 17 Q. And in this memorandum, this August 26, 18 1969 memorandum, again, Dr. Wakeham is asking 19 permission to do biological research, correct? 20 A. Correct. 21 Q. And he lists a whole slew of types of</p>	<p>Page 53</p> <p>1 respect to the issue of cigarette smoking and 2 health? 3 A. I don't think he would. 4 Q. He wouldn't make presentations to the 5 board on the issue? 6 A. Of cigarette smoking and health, I 7 don't think so. 8 Q. All right. Now, this is a pretty 9 detailed outline of the biological research that 10 he wants to perform; is it not? 11 A. Yes. It is. 12 Q. And this does not jog your memory as to 13 whether or not, as to the events rather that are 14 referred to in the document? 15 A. I don't remember exactly this date or 16 anything like that, but I do remember that 17 eventually I agreed and recommended to Philip 18 Morris that we buy a company in Cologne called 19 INBIFO to do this type of work. 20 And I think what I read in 21 Dr. Wakeham's memo here, what really motivated me</p>
<p>Page 51</p> <p>1 testing that he wants to perform, correct? 2 A. Correct. 3 Q. Inhalation studies, correct? 4 A. Correct. 5 Q. Tests for carcinogenic activity. You 6 know what carcinogenic means? 7 A. Yes, I do. 8 Q. Tell the jury what it means? 9 A. It causes cancer. 10 Q. He wants to test for that, he wants to 11 do evaluation of new bioassay tests. What are 12 bioassay tests? 13 A. I'm not quite clear what they are. 14 Q. In any event, he wants to do a number, 15 permission to do a number of biological testing 16 because he thinks it is relevant to the issue of 17 cigarette smoking and health, correct? 18 A. That's correct. 19 Q. And again he was the person at least in 20 Philip Morris, he was a corporate officer, 21 correct?</p>	<p>Page 54</p> <p>1 was that we wanted to track work done by others. 2 Q. You wanted to replicate, see if you 3 could replicate like animal painting studies and 4 inhalation studies, correct? 5 A. Yes. 6 Q. There were scientists who were doing 7 those types of studies and they were coming to a 8 conclusion that there was a relationship between 9 the smoke condensate and tumors, correct? 10 A. I wasn't going that far. I just said 11 that there was a program done by the -- I forget 12 exactly who did the Tobacco Working Group, which 13 government agency was in charge of Tobacco 14 Working Group, and I wanted to replicate the data 15 or I wanted to be as aware of the data that was 16 going to come out of that program. 17 Q. And, in other words, you wanted to see 18 whether the data was correct? 19 A. That's correct. 20 Q. And one of the reasons that you thought 21 it was a good idea to acquire INBIFO, and just so</p>
<p>Page 52</p> <p>1 A. I don't remember whether he was a 2 corporate officer or whether he was an officer of 3 the operating company. 4 Q. If you don't remember, you don't 5 remember? 6 A. I don't. 7 Q. You do remember though that he was the 8 person who the board looked to for information on 9 cigarette smoking and health, correct? When I 10 say the board, the board of Philip Morris? 11 A. Not on cigarette smoking and health. 12 That was the responsibility of the Council of 13 Tobacco Research. 14 Q. The Council for Tobacco Research would 15 advise Philip Morris on the issue of cigarette 16 smoking and health? 17 A. No. They would do the work on 18 cigarette smoking and health. 19 Q. I'm looking to determine whether 20 Dr. Wakeham was the individual at Philip Morris 21 who would advise the board of directors with</p>	<p>Page 55</p> <p>1 the jury understands, INBIFO was a research 2 facility, correct? 3 A. It was a testing facility. 4 Q. They did research, correct? 5 A. I don't know whether you would term it 6 research. It was there to do, it was doing 7 defensive work. We were not trying to establish 8 anything in the area of smoking and health. We 9 were trying to test, check the work done by 10 others on the, what happened to animals under 11 certain conditions. 12 Q. Right. And those, that research that 13 was being performed for Philip Morris was being 14 performed overseas at INBIFO, correct? 15 A. It was being done, you call it 16 research, but that sort of word was being done by 17 INBIFO in Cologne. 18 Q. Let's call it testing, animal testing, 19 okay? 20 A. Good. 21 Q. Animal testing was being done by Philip</p>

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<p>Page 56</p> <p>1 Morris in Germany, correct?</p> <p>2 A. In Cologne.</p> <p>3 Q. That's in Germany, just so the jury</p> <p>4 understands, that's Germany?</p> <p>5 A. Yes.</p> <p>6 Q. You are much more familiar with Germany</p> <p>7 than most of us. That's where you were born?</p> <p>8 A. I was born there.</p> <p>9 Q. And Philip Morris was paying for animal</p> <p>10 studies to be performed in Germany, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And at a certain point in time, it was</p> <p>13 decided that Philip Morris should acquire INBIFO,</p> <p>14 correct?</p> <p>15 A. That's correct.</p> <p>16 Q. So instead of INBIFO being a separate</p> <p>17 entity that was receiving monies from Philip</p> <p>18 Morris in the United States to do research or do</p> <p>19 studies, Philip Morris was going to actually own</p> <p>20 the facility itself, correct?</p> <p>21 A. That's correct.</p>	<p>Page 59</p> <p>1 A. Just because Dr. Wakeham says it</p> <p>2 doesn't mean I have to agree with it.</p> <p>3 Q. I know. Do you have any reason to</p> <p>4 think that he was lying in this internal memo?</p> <p>5 MR. HAFETZ: Objection.</p> <p>6 A. It has nothing to do with lying. It was</p> <p>7 his feeling. I don't know why he had the</p> <p>8 feeling. That was not my motivation.</p> <p>9 Q. And this doesn't, you remember what</p> <p>10 your motivation was now, correct?</p> <p>11 A. I mentioned my motivation to you</p> <p>12 before. My motivation was to track the work done</p> <p>13 by others.</p> <p>14 Q. All right. That could have easily been</p> <p>15 done in the United States, couldn't it?</p> <p>16 A. Could have.</p> <p>17 Q. There was no reason why it could not be</p> <p>18 done in the United States, correct?</p> <p>19 A. Well, you do it wherever you feel you</p> <p>20 can acquire somebody who is most competent.</p> <p>21 Q. And before you acquired INBIFO, Philip</p>
<p>Page 57</p> <p>1 Q. And one of the reasons that Philip</p> <p>2 Morris bought that facility in Germany was that</p> <p>3 Philip Morris could then do certain types of</p> <p>4 studies that they didn't want to do in the United</p> <p>5 States, because they were worried that if they</p> <p>6 did the studies in the United States, it might</p> <p>7 jeopardize their position in cigarette smoking</p> <p>8 and health litigation, correct?</p> <p>9 A. No. That's not correct.</p> <p>10 Q. Let me see if I can refresh your memory</p> <p>11 on that issue. I'm going to hand you a</p> <p>12 memorandum from again Dr. Wakeham.</p> <p>13 It is a memorandum from Dr. Wakeham to</p> <p>14 you of April 7, 1970; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Philip Morris letterhead?</p> <p>17 A. That's correct.</p> <p>18 Q. Subject: Acquisition of INBIFO,</p> <p>19 correct?</p> <p>20 A. That's correct.</p> <p>21 Q. That's the same INBIFO that you told us</p>	<p>Page 60</p> <p>1 Morris was paying another company in Cologne,</p> <p>2 INBIFO, another company at that time to do those</p> <p>3 studies in Germany, correct?</p> <p>4 A. We were doing work with them before.</p> <p>5 Q. In Germany?</p> <p>6 A. And we were paying them in Germany.</p> <p>7 Q. Those were animal studies?</p> <p>8 A. And at a later time we acquired the</p> <p>9 company.</p> <p>10 Q. You could have been doing those animal</p> <p>11 studies in the United States, correct?</p> <p>12 A. No.</p> <p>13 Q. There weren't labs in the United States</p> <p>14 doing animal painting?</p> <p>15 A. I'm sure there was. My recollection,</p> <p>16 we felt this was a more qualified lab than</p> <p>17 somebody who was available to us in the United</p> <p>18 States.</p> <p>19 Q. And, in fact, there were concerns that</p> <p>20 if there was too much of a direct contact between</p> <p>21 Philip Morris in the United States, and INBIFO in</p>
<p>Page 58</p> <p>1 before is located in Cologne Germany?</p> <p>2 A. That's correct.</p> <p>3 Q. Where they were doing animal studies</p> <p>4 for Philip Morris, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. I wanted to direct your attention to</p> <p>7 the last paragraph where Dr. Wakeham says:</p> <p>8 "Since we have a major program at INBIFO and</p> <p>9 since this is a locale where we might do some of</p> <p>10 the things which we are reluctant to do in this</p> <p>11 country, I recommend that we acquire INBIFO,</p> <p>12 either in toto or to the extent of controlling</p> <p>13 interest."</p> <p>14 Do you see that, sir?</p> <p>15 A. I see that.</p> <p>16 Q. Did I read that correctly?</p> <p>17 A. You read it correctly.</p> <p>18 Q. Do you have any reason to question</p> <p>19 Dr. Wakeham's veracity with respect to that</p> <p>20 statement?</p> <p>21 MR. HAFETZ: Objection.</p>	<p>Page 61</p> <p>1 Germany, that you might have problems in not</p> <p>2 disclosing the research to United States</p> <p>3 authorities, correct?</p> <p>4 A. No. Indirect.</p> <p>5 MR. GARNICK: Objection to form. Let me</p> <p>6 have an opportunity to object. Objection to</p> <p>7 form.</p> <p>8 THE WITNESS: Okay.</p> <p>9 Q. While we are looking for that document,</p> <p>10 I asked you what started our discussion was my</p> <p>11 question to you as to why biological research was</p> <p>12 not being funded or not being performed in the</p> <p>13 United States, and I asked you whether or not you</p> <p>14 recalled that one of the reasons that it was not</p> <p>15 being performed is because the risk of doing it,</p> <p>16 it was too risky to do that in the United States</p> <p>17 from a legal point of view; is that correct?</p> <p>18 MR. GARNICK: Objection.</p> <p>19 MR. EDELL: You remember my questions</p> <p>20 on that issue?</p> <p>21 THE WITNESS: Will you restate it for</p>

<p>Page 62</p> <p>1 me. 2 Q. I said to you that, in fact, the 3 decision that biological research was not being 4 performed, that to do so in-house might pose a 5 legal PROBLEM for Philip Morris; is that correct? 6 A. I said I didn't agree with that. 7 Q. Do you remember that that was one of 8 the reasons why Philip Morris was not doing 9 biological research in-house? 10 A. No. 11 Q. Let's see if I can refresh your memory 12 on that issue, Mr. Goldsmith. All we need is 13 this top page here. 14 I'm going to show you a document which 15 is October 7, 1969, and that is a confidential 16 document from Joseph F. Cullman, III, correct? 17 A. Yes. 18 Q. To Ross R. Millhiser? 19 A. Right. 20 Q. Can you tell the jury who Mr. Millhiser 21 is?</p>	<p>Page 65</p> <p>1 philosophical and practice problems of mounting a 2 PM biological research program seem to me to 3 outweigh the advantages. 4 Do you see that, sir? 5 A. Oh, year. I see that. 6 Q. Do you have any reason to question 7 whether that was Mr. Cullman's motivation for 8 rejecting a change in policy not to do biological 9 research? 10 A. Look, I couldn't disagree with what the 11 chairman writes in the memorandum. That's what 12 he seems to have written. 13 Q. Do you have any reason to believe that 14 that was not the motivating factor for Philip 15 Morris not doing biological research in-house? 16 A. I really can't, I can't respond to that 17 at all. 18 Q. You don't know whether there is any 19 reason for you to disbelieve that that is the 20 reason why? 21 A. Look, all I see here is a memorandum in</p>
<p>Page 63</p> <p>1 MR. GARNICK: Do you have another copy 2 of that document? 3 MR. EDELL: Yes. I do. 4 I think he was my boss at that 5 particular time. Yes. He has. 6 Q. Certainly Mr. Cullman was your boss 7 also, correct? 8 A. Yes. He was. 9 Q. He was the guy that was calling the 10 shots for Philip Morris at that time? 11 A. Yes. He was. 12 Q. It shows a copy of this document going 13 to George Weissman, is that correct? 14 A. Yes. 15 Q. And who is George Weissman? 16 A. George Weissman? 17 Q. You remember him, don't you? 18 A. I do, but I don't remember what job he 19 had at that particular time. I think he was in 20 charge of marketing at that time. Well, no, 21 maybe he was in charge of international. I don't</p>	<p>Page 66</p> <p>1 which Mr. Cullman rejects the program. That's 2 all I know. I don't know why he did it or what 3 his thinking was. I wasn't privy to the 4 conversation. 5 Q. You were privy to the memorandum? 6 A. I am privy, you are showing it to me 7 now, and I certainly must have been privy at that 8 time, but I wasn't privy to the conversations 9 between Mr. Cullman, Mr. Millhiser and 10 Mr. Wakeham. 11 Q. But when you got this memorandum, you 12 weren't shocked that Mr. Cullman wasn't allowing 13 biological research at Philip Morris was because 14 of the legal, philosophical and practical 15 problems, correct? 16 A. Mr. Edell, you are trying to have me 17 tell you that I was shocked 30 years ago, when I 18 received the memorandum, I have no idea how I 19 felt. 20 Q. Did you write a memorandum in response 21 to this, saying I don't understand this,</p>
<p>Page 64</p> <p>1 really remember. 2 Q. Under Mr. Weissman, it is C. Goldsmith, 3 that is Clifford Goldsmith? 4 A. That's me. 5 Q. That's you? And the subject of this 6 document is Dr. Wakeham's memorandum relating to 7 biological research, correct? 8 A. Right. 9 Q. And it says: I have reviewed carefully 10 the proposal contained in Dr. Wakeham's 11 memorandum to Clifford Goldsmith, right? 12 A. Yes. 13 Q. Relative to what? 14 A. Biological research. 15 Q. I have discussed with you and George, 16 you being Mr. Millhiser, with you and George 17 Weissman informally my serious reservations about 18 the wisdom of embarking on this program at this 19 time. Do you see that? 20 A. I see that. 21 Q. On the bottom he says: The legal,</p>	<p>Page 67</p> <p>1 Mr. Cullman? 2 A. I have no idea whether I did or 3 didn't. I have no recollection of it. 4 Q. If you did, it would have been in your 5 files, when you left, correct? 6 A. Probably would have. 7 Q. Now, I will make a representation that 8 we never saw such a memorandum, hasn't been 9 produced by Philip Morris to us. I don't know 10 whether your personal counsel has a copy of it? 11 A. That I wrote a memorandum? 12 Q. Yes. 13 A. I didn't take any of my files with me, 14 so if there was no memorandum, I would assume it 15 wasn't written. 16 MR. EDELL: We have been going for 17 about an hour. Why don't we take a short break. 18 VIDEO OPERATOR: We are going to go off 19 the record, the time is 11:03 a.m. 20 (Break.) 21 VIDEO OPERATOR: Back on the record,</p>

<p>Page 68</p> <p>1 the time is 11:14 a.m. 2 Q. Mr. Goldsmith, during the break, I 3 located an earlier draft of one of Dr. Wakeham's 4 memorandums, and I would like to direct your 5 attention specifically to the fourth page of the 6 document, sir. 7 Just so the jury understands, the title 8 of this document is "need for biological research 9 by Philip Morris research and development." Is 10 that what it says on the first page? 11 A. Yes, sir. That's what it says. 12 Q. On page four it says: "We have reason 13 to believe that in spite of gentlemen's agreement 14 from the tobacco industry in previous years, that 15 at least some of the major companies have been 16 increasing biological studies within their own 17 facilities." 18 Does that refresh your memory, sir, of 19 the agreement within the industry not to do 20 biological research? 21 A. No. It does not.</p>	<p>Page 71</p> <p>1 Q. Can you tell the jury what FTR was? 2 A. It is the Swiss subsidiary of Philip 3 Morris in Europe. 4 Q. Manufactures cigarettes? 5 A. Manufactures cigarettes. 6 Q. We also discussed before the break the 7 fact that one of the reasons Philip Morris wanted 8 to do research over in Germany was because they 9 believed that the information that would be 10 generated from the studies overseas would not be 11 subject to discovery, if you will, in the United 12 States? 13 MR. HAFETZ: Objection. 14 Q. Do you remember those questions, sir? 15 A. No. 16 Q. Let me ask you this: Was it your 17 understanding that one of the reasons why Philip 18 Morris performed animal studies in Europe was 19 because they wanted to ensure that it would be 20 difficult for any of the results of those studies 21 to be discovered in any United States smoking and</p>
<p>Page 69</p> <p>1 Q. And you don't, is it your testimony 2 that you know that there was no such agreement or 3 you don't recall whether there was an agreement 4 or not? 5 A. I don't recall any agreement. 6 Q. Now, again we were talking also before 7 we took the break about INBIFO; do you remember 8 that, sir? 9 A. Yes, sir. I do. 10 Q. Can you tell the jury who Robert 11 Seligman is? 12 A. Robert Seligman was a senior executive 13 in the Research Department. 14 Q. At Philip Morris? 15 A. At Philip Morris. 16 Q. Is he a corporate officer? 17 A. No. I don't think he was. 18 Q. Was he in charge of research and 19 development? 20 A. At one time he became in charge of 21 research and development.</p>	<p>Page 72</p> <p>1 health litigation? 2 A. I don't remember exactly why the 3 lawyers did not want to submit data in the United 4 States, from INBIFO to the United States, but 5 that was a legal decision. 6 Q. The lawyers decided that? 7 A. That's right. 8 Q. But the people who ran Philip Morris 9 went along with that decision, correct? 10 A. I don't know what you mean by that, 11 sir. 12 Q. Well, the lawyers, when you say "the 13 lawyers" are you talking about the lawyers within 14 Philip Morris as well as their outside counsel? 15 A. I don't remember exactly whether it was 16 in-house or outside counsel. 17 Q. But in any event, the people who were 18 running Philip Morris followed the advice of the 19 lawyers, correct? 20 A. That's correct. 21 Q. And Philip Morris went through</p>
<p>Page 70</p> <p>1 Q. Can you tell us who Dr. Max Hausermann 2 is or was? 3 A. Also a senior research official at 4 Philip Morris. 5 Q. He was located in New York, is that 6 correct, Dr. Hausermann? 7 A. Yes. He was. 8 Q. Did he have any contact with, was he 9 with Philip Morris Europe? 10 A. Yes. He was. 11 Q. Can you tell the jury what Philip 12 Morris Europe was or is? 13 A. Philip Morris Europe is a part of the 14 corporation that operates in Europe. 15 Q. Did it have a separate research and 16 development facility? 17 A. Yes. It did. 18 Q. And did it have any relationship to 19 FTR? 20 A. FTR was part of Philip Morris Europe, I 21 think.</p>	<p>Page 73</p> <p>1 tremendous pains to make sure -- Philip Morris in 2 the United States, went through tremendous pains 3 to make sure that they had very little contact 4 with INBIFO over in Germany; is that correct? 5 MR. GARNICK: Objection to form. 6 Q. Sir? 7 A. No. That's not correct. 8 Q. You remember that being the case, or 9 you just don't recall that? 10 A. I don't recall that. 11 Q. That's what I thought. Let's take a 12 look at this document which is P-12885. This is 13 a letter of March 31, 1977 from Robert B. 14 Seligman, who you told us was the head of 15 research and document for Philip Morris in the 16 United States, correct, sir? 17 A. At one time he became that, yes. 18 Q. It is a letter to Max Hausermann who 19 was the head of research and development over at, 20 research and development at Philip Morris Europe, 21 correct?</p>

Page 74

1 A. Yes.
2 Q. I will ask you to read the letter and
3 tell us whether it refreshes your recollection
4 that the procedures employed at Philip Morris in
5 the United States were such that they tried to
6 avoid any contact with INBIFO over in Europe.
7 You say where he says, last sentence,
8 just in case you missed it, first paragraph: "We
9 have gone to great pains to eliminate any written
10 contact with INBIFO and I would like to maintain
11 this structure."
12 You see that, sir?
13 A. Yeah, I see that.
14 Q. And the subject that is being discussed
15 here is studies that were being done at INBIFO
16 concerning pesticide residue; isn't that
17 correct?
18 A. That's what it says here.
19 Pesticide residue being pesticide
20 residue in cigarettes, correct? Sir?
21 A. No. I don't think so.

Page 75

1 Q. Certainly you know that the subject of
2 this document is the shipment of cigarettes from
3 the United States to Europe; isn't that correct?
4 A. I think that's correct, but I am
5 wondering whether that is not pesticide residues
6 on tobacco, rather than in cigarettes. I don't
7 know what it was.
8 Q. You know that there is pesticide
9 residue in cigarettes, correct?
10 A. No. I know there is some on tobacco.
11 Whether it survives in the cigarette, I don't
12 know.
13 Q. You don't know that?
14 A. I don't know.
15 Q. You have no reason to believe that it
16 doesn't; is that correct?
17 A. I don't have any reason to believe that
18 it does.
19 Q. Well, that may be a question that you
20 would like to answer. My question to you is: Do
21 you have any reason to believe that pesticide

Page 76

1 residue is not found in the cigarettes that are
2 sold and manufactured by Philip Morris?
3 MR. HAFETZ: Objection to form.
4 MR. EDELL: Sir?
5 A. I don't understand the question. Would
6 you repeat it?
7 MR. EDELL: Sure.
8 (The record was read by the reporter.)
9 A. Yes. I think that it is quite possible
10 that these residues are eliminated or reduced
11 during the manufacturing process.
12 Q. And in what manner are they reduced or
13 eliminated in the manufacturing process?
14 A. I didn't say they were. I said it
15 could be that they are reduced.
16 Q. So, in other words, anything is
17 possible, but you don't know whether or not --
18 A. I don't know whether or not.
19 Q. In the manufacturing process the
20 pesticide residue found in tobacco is either
21 eliminated or reduced; is that correct?

Page 77

1 A. That's correct.
2 Q. All right. Now, is it fair to say,
3 sir, that this document is a document by
4 Dr. Seligman expressing concern of direct contact
5 between Philip Morris in the United States and
6 INBIFO?
7 MR. HAFETZ: Objection.
8 MR. EDELL: Sir?
9 A. This document says what it says.
10 Q. What does it say, sir?
11 A. It says: I have gone through great
12 pains to eliminate any written contact with
13 INBIFO, and I would like to maintain this
14 structure. That is Dr. Seligman.
15 Q. It says "we" not "I", isn't it, we have
16 gone through great pains?
17 A. He's talking about the Research
18 Department, I guess.
19 Q. Research Department in the United
20 States, correct?
21 A. Yes, I think so.

Page 78

1 Q. And, in fact, they were referring to a
2 dummy mailing address that they would send. You
3 know what a dummy mailing address would be?
4 A. I know what it would be, but I don't
5 know anything else about any dummy mailing
6 address.
7 Q. And this doesn't jog your memory that
8 Philip Morris went to great pains to ensure that
9 the research they were conducting over in Europe
10 would not be discovered in the United States?
11 A. No. It does not.
12 Q. And you are aware that there were
13 research results that were produced from research
14 performed at INBIFO that were not published by
15 Philip Morris; isn't that correct?
16 A. I think it is correct that Philip
17 Morris doesn't publish everything that they
18 produced. It is not a matter of competitive
19 advantage to publish everything you do.
20 Q. When you say "competitive advantage" is
21 it your testimony that the research that was

Page 79

1 being done at INBIFO related to competitive
2 advantage?
3 A. No. You asked me whether anything was
4 published. I'm saying in general not everything
5 we do is published.
6 Q. Certainly, if it related to cigarette
7 smoking and health you would expect Philip Morris
8 to publish it; is that correct?
9 A. No. It is not.
10 Q. So if the research results show that
11 CO -- do you know what CO is?
12 A. Carbon monoxide.
13 Q. Carbon monoxide and nicotine in
14 laboratory animals, they wouldn't have published
15 those results, is correct?
16 MR. GARNICK: Objection to form.
17 A. I don't think it would have been
18 published.
19 Q. Certainly, test result like that
20 wouldn't help Philip Morris in terms of selling
21 its product, correct?

<p>Page 80</p> <p>1 MR. GARNICK: Objection to form. 2 MR. EDELL: Sir? 3 A. I don't know. They could have and they 4 couldn't have. It is a very general question, I 5 really can't answer. 6 Q. Who is Mr. Holtzman? 7 A. He is a lawyer. 8 Q. And what was part of your job 9 responsibilities in 1977 that would bring you in 10 contact with Mr. Holtzman? 11 A. 1977. Anything could have brought me 12 in contact with Mr. Holtzman. 13 Q. What would have gotten you in contact 14 with Mr. Holtzman with regard to INBIFO'S 15 unpublished reports regarding the effects of 16 carbon monoxide and nicotine on the survival of 17 mice? 18 MR. HAFETZ: Objection. 19 A. I have no idea. 20 Q. I'm sorry, sir? 21 A. I have no idea.</p>	<p>Page 83</p> <p>1 getting a copy of this memorandum? 2 A. I am sure Dr. Wakeham liked to copy me. 3 Q. On anything? 4 A. Well, I have no idea why he copied me 5 on this memorandum. I don't recollect the 6 memorandum. 7 Q. Well, did you read it? 8 A. Just now? 9 Q. Yes. 10 A. No. I haven't finished reading it. 11 Q. How can you tell you don't remember, if 12 you don't read it? 13 A. I don't remember Domingo Aviado. 14 Q. You remember INBIFO? 15 A. I remember INBIFO. 16 Q. You see where it says in the first 17 sentence: Many years ago an INBIFO study 18 (unpublished) of the effects of CO -- that's 19 carbon monoxide? 20 A. Yes. 21 Q. And nicotine on the survival of mice</p>
<p>Page 81</p> <p>1 Q. You have no idea? 2 A. No. Why I would have talked to 3 Mr. Holtzman, I have no idea. 4 Q. Did any of your responsibilities relate 5 to INBIFO in 1977? 6 A. I think in 1977, I was in charge of 7 Philip Morris USA, and INBIFO at that time, yeah. 8 I think so. 9 Q. You think what, sir? 10 A. I think I had some responsibilities 11 with regard to INBIFO. 12 Q. What was that responsibility? 13 A. Because INBIFO reported to the Research 14 Department, and I was in charge of the Research 15 Department, and therefore, I would have had 16 loose responsibility, general responsibility, 17 over INBIFO. 18 Q. Who is Dr. Domingo Aviado? 19 A. I have no idea. 20 Q. You don't remember him being an expert 21 used by the tobacco industry regarding certain</p>	<p>Page 84</p> <p>1 show that the effects are additive. What does 2 that mean to you? 3 A. The effects of one added to the effect 4 of the other. 5 Q. He goes on to say in his memorandum: 6 That is in the presence of nicotine, carbon 7 monoxide effects are more pronounced than effects 8 of an equal exposure to carbon monoxide alone; is 9 that correct? 10 A. That's what it says. 11 Q. What are the effects on human beings of 12 carbon monoxide that you are aware of? 13 A. I can't describe that. 14 Q. Certainly enough carbon monoxide can 15 kill you; is that right? 16 A. I think so. 17 Q. That's how people kill themselves 18 sitting in the garage with the engine on, right? 19 A. That's what I -- I think so, yes. 20 Q. Sure. This document also talks about 21 the effects of nicotine on the heart, correct?</p>
<p>Page 82</p> <p>1 legislative processes? 2 A. No. I don't. 3 Q. Let me show you a document 13486, it is 4 a memorandum from Dr. Wakeham, head of research 5 and development; is that correct? 6 A. Yes. 7 Q. To Alex Holtzman; is that correct? 8 A. Yes. It is. 9 MR. HAFETZ: Can we have just one 10 minute. 11 MR. EDELL: Here, I'll give you your 12 own copy. 13 Q. It is dated May 18, 1977; is that 14 correct? 15 A. That's correct. 16 Q. The subject is CPR special project with 17 Dr. Domingo Aviado, is that correct? 18 A. Yes, sir. 19 Q. It shows a copy going to whom? 20 A. Me, Seligman and Resnick. 21 Q. Do you have any idea why you would be</p>	<p>Page 85</p> <p>1 A. Yes. 2 Q. Tell us why was it that Philip Morris 3 didn't publish the results of that unpublished 4 INBIFO study? 5 MR. HAFETZ: Objection. No foundation 6 for the question. 7 A. I have no idea. 8 MR. EDELL: Counsel, all objections 9 except to the form are reserved until trial. 10 MR. HAFETZ: That may be form objection 11 as well, I'm not sure if it crosses over. If it 12 is form, it is foundation. 13 MR. EDELL: And if it is not, you don't 14 need to make it, right? 15 MR. HAFETZ: Right. Neither one of us 16 is certain, so to protect the record it is on 17 foundation. 18 MR. EDELL: If you have any objection 19 as to foundation, you won't waive it by not 20 making the objection. Okay, is that fair? 21 MR. HAFETZ: All right.</p>

<p>Page 86</p> <p>1 MR. EDELL: Yes. 2 MR. HAFETZ: Okay. 3 MR. EDELL: Could you answer the 4 question, sir? 5 (The record was read by the reporter.) 6 A. I don't think Philip Morris didn't 7 publish many studies, and I don't know why they 8 didn't publish this one. Publication of studies 9 of that nature really wouldn't have served any 10 purpose that I am familiar with. 11 Q. Wouldn't have served any purpose that 12 I'm familiar with, correct, sir? 13 A. Correct. 14 Q. Contribution to the literature on 15 cigarette smoking and health and potential 16 harmful effects, that's a purpose, isn't it, sir? 17 A. Could be. 18 Q. Could be if you are interested in 19 making sure that the public, the scientific 20 public and the medical community has all the 21 information that you have regarding the potential</p>	<p>Page 89</p> <p>1 Morris in the smoking and health litigation; do 2 you know a what that means? Do you have an 3 understanding of what that means? 4 A. I do. 5 Q. Can you tell Mr. Garnick how you 6 interpret that? 7 MR. GARNICK: Mr. Goldsmith, don't tell 8 me anything. 9 Q. Tell us, and then Mr. Garnick will 10 hear. 11 MR. HAFETZ: Objection to form. 12 Q. Sir? 13 A. I've lost you, I'm sorry. 14 (The record was read by the reporter.) 15 A. I have an understanding of what it 16 means. 17 Q. Tell the jury what your understanding 18 is, please. 19 A. My understanding is that it would be 20 adverse to health litigation. 21 Q. Might affect your ability to defend</p>
<p>Page 87</p> <p>1 deleterious effects of your product, correct? 2 A. Well, I just -- let me answer you in 3 general. I don't believe that we published a 4 great deal of the data, of the work done at 5 INSIRO. 6 Q. You are aware that one of the reasons 7 that it wasn't published is because it might be 8 harmful to you with respect to your position on 9 cigarette smoking and health? 10 A. No. 11 Q. You remember that? You don't remember 12 that? 13 A. I said that wasn't the reason. 14 Q. You are definitively saying that is not 15 the reason. You are not saying that I don't 16 remember, you are saying I know that Philip 17 Morris didn't publish this information not 18 because it relates to cigarette smoking and 19 health litigation, correct? 20 A. No. I didn't. I said I don't remember 21 why. I can't tell you why it did not publish</p>	<p>Page 90</p> <p>1 yourself in the litigation? Is that correct, 2 sir? 3 A. Could be. 4 Q. Well, you understand that to be a part 5 of the question, correct? 6 A. Yes. 7 Q. Tell the jury who Dr. Osdene is? 8 A. Dr. Osdene was a scientist in the 9 Research Department. 10 Q. Are you familiar that Dr. Osdene has 11 taken the Fifth Amendment regarding questions 12 regarding his employment at Philip Morris? 13 MR. HAFETZ: Objection. 14 A. Yes, sir. 15 MR. EDELL: That is a form objection? 16 MR. HAFETZ: Objection. Propriety of 17 the question. 18 MR. EDELL: Propriety of the question. 19 That's reserved, isn't it, counsel? 20 MR. HAFETZ: You just asked what the 21 basis was.</p>
<p>Page 88</p> <p>1 this or that particular piece of work. I just 2 can't tell you why. 3 Q. You know that it was the practice at 4 Philip Morris to bury any results that were 5 potentially harmful to them in their cigarette 6 smoking and health litigation, correct? 7 MR. GARNICK: Objection to the form. 8 MR. EDELL: What's your objection? 9 What's wrong with the form of the question? 10 MR. GARNICK: Practice is vague, burying 11 results is vague, potentially harmful to them is 12 vague. 13 MR. EDELL: Okay. Do you understand the 14 question, sir? 15 THE WITNESS: No. 16 Q. You don't have any idea what I mean 17 when I say burying the results? 18 A. I have an idea. 19 Q. What do you interpret that to mean? 20 A. Burying the results means hiding them. 21 Q. And that might be adverse to Philip</p>	<p>Page 91</p> <p>1 MR. EDELL: I wanted to make sure I 2 wasn't missing something. You are interfering 3 with the questioning of the witness. 4 MR. HAFETZ: You asked the basis of the 5 question. I stated it. 6 MR. EDELL: I wanted to make sure it 7 was a form objection. You are only to object to 8 the form of the question. 9 MR. HAFETZ: It was not a form 10 objection. 11 MR. EDELL: Then don't make the 12 objection. 13 MR. HAFETZ: You asked me the basis for 14 it. 15 MR. EDELL: That's right. 16 MR. HAFETZ: I didn't object to form. 17 If you heard my answer, I said wasn't form, you 18 wouldn't have asked the basis. You asked me the 19 basis. Why don't we have it read back. 20 MR. EDELL: If you don't have an 21 objection to the form of the question, please</p>

<p>Page 92</p> <p>1 don't disrupt the proceedings. 2 MR. HAFETZ: Mr. Edell, if you continue 3 to ask me the basis of the objection, even when 4 it is not form, I will comply with the request 5 and say so. So if you don't want to hear my 6 answer as to what is the basis for an objection 7 that is not form, don't ask me. 8 MR. EDELL: I did want to hear your 9 answer, I didn't want to hear the objection, if 10 it didn't relate to the form of the question, so 11 you are clear. 12 MR. HAFETZ: I understand that, and you 13 are clear to me now. We're both clear. 14 MR. EDELL: Well, good. I'm glad then. 15 Q. You told us that you did remember that 16 Dr. Osdene did plead the Fifth Amendment. 17 MR. HAFETZ: Objection. 18 A. You asked me whether I was aware of it. 19 Q. You were aware of it? 20 A. I was aware of it. 21 Q. You said, yes, you were aware of it?</p>	<p>Page 95</p> <p>1 answering that question, correct? 2 A. I don't -- I'm not specifically 3 familiar with what his work was on nicotine. 4 Q. You don't remember, sir? 5 A. I said I don't remember. 6 Q. You don't remember. Okay. 7 MR. HAFETZ: May we have a copy? 8 MR. EDELL: Oh, sure. 9 Q. This is a memorandum from Dr. Dunn to 10 Dr. Osdene; am I correct, sir? 11 A. Yes, sir. 12 Q. November 3, 1977? 13 A. Yes, sir. That's correct. 14 Q. You see where he says, it is regarding 15 a proposed study by a Dr. Levy? 16 A. Right. 17 Q. He says: "If, however, the results 18 with nicotine are similar to those gotten with 19 morphine and caffeine, we will want to bury it." 20 You see that, sir? 21 A. I see it.</p>
<p>Page 93</p> <p>1 A. Yes, sir. 2 Q. Yes, sir? 3 A. Yes, sir. 4 Q. Can you tell the jury who Dr. Osdene 5 was and what his relationship was or is to Philip 6 Morris? 7 A. He is a scientist that works in the 8 research or worked in the research department. 9 Q. Was he an officer of Philip Morris? 10 A. Not to my knowledge. 11 Q. Did he have any supervisory 12 responsibility at research and development? 13 A. I think he did. 14 Q. What was his supervisory 15 responsibilities? 16 A. I don't recollect. 17 Q. I'm going to show you. Where were you 18 in 1977? You were at Philip Morris? 19 A. Yes, sir. 20 Q. What was your position? 21 A. I think I was at that time, president</p>	<p>Page 96</p> <p>1 Q. Is that consistent with your 2 recollection of the practice at Philip Morris 3 with respect to adverse results of studies? 4 A. No. 5 Q. Do you have any reason to believe that 6 that was not the practice at Philip Morris? 7 A. Yes. 8 MR. HAFETZ: Objection. 9 Q. What is the basis of your statement, 10 sir? 11 A. To my recollection, we did not bury 12 anything. 13 Q. Well, you don't remember burying 14 anything at Philip Morris? 15 A. I said to my recollection, same thing 16 as remembering. 17 Q. You can't state categorically that 18 Philip Morris never buried any test results, 19 correct? 20 A. Of course not, Mr. Edell. I can't be 21 down there and watch every employee and see what</p>
<p>Page 94</p> <p>1 of Philip Morris USA 2 Q. Did that have any relationship to the 3 research and development facility in Virginia, 4 Richmond, Virginia? 5 A. Yes. It did. 6 Q. And what was its relationship? 7 A. Well, in general, as the president I 8 was in charge of the company. 9 Q. Let me show you a memorandum from 10 Dr. Dunn. You know who Dr. Dunn is, correct? 11 A. Yes. 12 Q. Tell the jury who Dr. Dunn is, please. 13 A. He also worked in the Research 14 Department as a scientist. 15 Q. He did a lot of work on why people 16 smoke, correct? 17 A. Yes. He did. 18 Q. And why they continue to smoke, 19 correct? 20 A. Yes. 21 Q. And the effects of nicotine in</p>	<p>Page 97</p> <p>1 every individual employee does. It was not the 2 policy of the corporation. 3 Q. You are telling me that it was not the 4 policy to bury adverse test results, correct? 5 A. That's correct. 6 Q. It was the policy not to publish 7 adverse test results? 8 A. I didn't say that. 9 Q. Was it the policy to not publish 10 potentially adverse study results? 11 A. I don't recollect what the exact policy 12 on publishing was. 13 Q. But you have a distinct recollection 14 with respect to burying test results? 15 A. I have only a distinct recollection 16 that the corporation would not bury matters. 17 Q. When you say "bury" what do you mean? 18 A. What it says here, burying. 19 Q. What does it mean, sir? 20 A. Hiding. 21 Q. Totally get rid of it, or was burying</p>

<p>Page 98</p> <p>1 include failure to disclose it to the public? 2 A. I can't answer that question. 3 Q. I want you to tell the jury what you 4 mean when you say it wasn't the policy at Philip 5 Morris to bury adverse test results? Do you mean 6 it wasn't the policy to destroy them or it wasn't 7 the policy to not publish them? 8 A. It wasn't the policy to not -- 9 MR. HAFETZ: Objection. Objection to 10 form. 11 A. -- to not disclose it. 12 Q. You are testifying to that under oath; 13 is that correct? 14 A. Yes. I am. 15 Q. And when did you disclose the test 16 results regarding the comparison between the way 17 humans smoke and the way that the machines smoke 18 that were used by the FTC to identify tar and 19 nicotine numbers on packs of cigarettes? 20 MR. HAFETZ: Objection. 21 A. Will you repeat that or rephrase it? I</p>	<p>Page 101</p> <p>1 Q. You don't remember being part of that 2 process? 3 A. No. 4 Q. Let me see if I can refresh your 5 memory. Before we do, let me ask you a question 6 about nitrosamines. You know what nitrosamines 7 are? 8 A. Yes, I do. 9 Q. It is suspected that nitrosamines cause 10 cancer, is that correct, contribute to the 11 development of cancer, correct? 12 A. Yes. 13 Q. And certainly, if research was being 14 performed for Philip Morris relating to the issue 15 of nitrosamines, that research would have been 16 published, correct, according to your statement 17 as to what the practice and policy at Philip 18 Morris was? 19 MR. GARNICK: Objection to form. 20 MR. HAFETZ: Objection. 21 A. No. I don't think you could read that</p>
<p>Page 99</p> <p>1 don't understand what you are talking about. 2 Q. You are aware of the fact that there 3 were tests being performed at Philip Morris to 4 determine whether the FTC numbers, you are 5 familiar with the FTC numbers regarding tar and 6 nicotine, yes? 7 A. Right. 8 Q. You are aware that there was research 9 done at Philip Morris over in Europe and in the 10 United States, that concluded that those tests, 11 those numbers used by the FTC, were not accurate, 12 correct? 13 MR. HAFETZ: Objection. 14 MR. GARNICK: Objection to form. 15 MR. HAFETZ: And objection beyond form. 16 A. I would not state it as not being 17 accurate. I would say that machine smoking did 18 not necessarily duplicate human smoking. 19 Q. And those, that conclusion was a result 20 of research being performed by Philip Morris, 21 correct?</p>	<p>Page 102</p> <p>1 into what I testified to. 2 Q. So there would be instances where they 3 wouldn't publish test results, we know that 4 already, correct? 5 A. Right. 6 Q. And certainly research relating to 7 nitrosamines is relevant to the issue of 8 cigarette smoking and cancer, wouldn't you say? 9 A. I don't know that. 10 Q. You don't know that? 11 A. No. 12 Q. What was your relationship with Hoffman 13 LaRoche? You don't know that Hoffman LaRoche was 14 doing research respecting nitrosamines? 15 MR. HAFETZ: Objection. 16 A. No. I don't remember that. 17 Q. You don't remember Hoffman LaRoche 18 after meeting with Dr. Osdene stating that they 19 dropped all plans for publishing data on 20 nitrosamines? 21 MR. HAFETZ: Objection.</p>
<p>Page 100</p> <p>1 A. Yes. 2 Q. Philip Morris didn't publish that 3 research, didn't turn that over to the FTC, did 4 they? 5 A. Not to my knowledge. 6 Q. In fact, Philip Morris had a manuscript 7 committee, did they not? 8 A. I remember they had, yes. 9 Q. You participated in that process, 10 didn't you, sir? 11 A. I don't remember if I did. 12 Q. You don't remember that? 13 A. No. 14 Q. Tell the jury what the manuscript 15 procedure process was? 16 A. I don't remember the process. My 17 recollection is that the committee approved 18 matters for publication. 19 Q. And they also denied permission for 20 publication, correct? 21 A. That's correct.</p>	<p>Page 103</p> <p>1 A. No. 2 Q. Let me see if I can refresh your 3 memory, document 14087, it is a letter from John 4 W. Gage, is it, to Dr. Osdene, Director of 5 Research, 1977, correct? 6 A. Yes, sir. 7 Q. Same time when we were talking about 8 the Dunn memorandum regarding burying of research 9 results, correct, sir? 10 A. Yes, sir. 11 Q. The same time you were head of Philip 12 Morris, USA? 13 A. Yes, sir. 14 Q. You see on the bottom of the document 15 where it says: For reasons discussed in your 16 office, we have dropped all plans for publishing 17 data on nitrosamine inhibition in cigarette 18 smoke? 19 A. Yes, sir. 20 Q. You don't know about that either? 21 A. No.</p>

<p>Page 104</p> <p>1 Q. Did Dr. Osdene have the power within 2 the Philip Morris structure, to direct that such 3 publications not be made of Philip Morris test 4 results? 5 A. I really don't know. 6 Q. You wouldn't expect for him to do it of 7 his own accord, would you, sir? 8 A. Mr. Edell, I don't know. Why he did 9 it, or whether he did, I have no idea. 10 Q. Did you ever discuss the issue with him 11 as to whether or not he should or should not make 12 sure that all test results are being published? 13 A. No. I did not. 14 Q. Well, how was he advised as to this 15 supposed policy that you had at Philip Morris in 16 1977 not to fail to publish relevant study 17 results? 18 MR. HAFETZ: Objection to form. 19 A. I don't think I said that, Mr. Edell. 20 I didn't testify to that. 21 Q. You didn't testify as to what, sir?</p>	<p>Page 107</p> <p>1 as human health is concerned. 2 Q. To be on the safe side, though, you 3 made sure they were published, didn't you, just 4 in case they were relevant? 5 MR. HAFETZ: Objection to the form. 6 Q. Is that correct, sir? 7 A. I just told you, I didn't do that, no. 8 Q. Certainly couldn't have hurt the 9 scientific and medical community to publish those 10 results, correct? 11 A. I can't answer that. 12 Q. Can you imagine in any way it would 13 hurt the medical and scientific community? 14 A. Sure. Could have been misleading. 15 Q. Publishing it could have been 16 misleading? 17 A. Yes. It could. 18 Q. In what way? 19 A. I really can't answer that. 20 Q. You are under oath, and you told us 21 under oath that it could be misleading?</p>
<p>Page 105</p> <p>1 A. This policy. 2 Q. So there was no policy at Philip Morris 3 that mandated the publication of relevant 4 cigarette smoking and health research, correct? 5 MR. GARNICK: Objection to form. 6 A. I didn't say anything about cigarette 7 smoking and health research. I just said there 8 was no policy that I recollect about publishing 9 this data, yes or no. 10 Q. I could be wrong, but let me just see 11 if we are both on the same page. I asked you 12 whether or not Philip Morris had a policy with 13 respect to publication of research results that 14 related to cigarette smoking and health, correct, 15 you remember that? 16 A. Yes. I think so. 17 Q. Just so we are clear, what is, what was 18 your testimony as to what that policy was? 19 A. I don't think that the data that we are 20 talking about, namely the testing at INBIO and 21 other places, was smoking and health data. It</p>	<p>Page 108</p> <p>1 A. Right. 2 Q. And I want to know how. 3 A. Well, for example, it could say that 4 smoking caused a certain disease or cancer, when 5 it gave cancer on the skin of mice, and I don't 6 believe that that necessarily applies to human 7 beings. 8 Q. When you say "it doesn't necessarily 9 apply to human beings" -- 10 A. Nobody knows the answer. 11 Q. Certainly, Mr. Goldsmith doesn't know 12 that answer; is that correct? 13 A. That's correct. 14 Q. Mr. Goldsmith hasn't any training in 15 carcinogenicity; is that correct? 16 A. Certainly not. 17 Q. Dr. Wakeham certainly has that training 18 with respect to the constituents of cigarette 19 smoke, correct? 20 A. Constituents in cigarette smoke, yes. 21 Q. You are aware that Dr. Wakeham</p>
<p>Page 106</p> <p>1 was data on what the effect of cigarette smoke 2 would have on the backs and the lungs of animals, 3 but it did not, it was not work that had any 4 connection to human health. 5 Q. Well, sir, you are aware that the 6 animal painting studies were well accepted within 7 the tobacco industry as a test for toxicogenicity? 8 MR. HAFETZ: Objection. 9 A. No. 10 Q. You weren't aware of that? 11 A. No. I didn't say I wasn't aware of it, 12 I don't agree with it. 13 Q. It was generally accepted among 14 research directors that that was the case, 15 correct? 16 MR. GARNICK: Objection to the form. 17 A. I don't really know what the research 18 directors accepted or not. 19 Q. But you -- 20 A. But I did not, for one, accept that the 21 animal studies necessarily were relevant as far</p>	<p>Page 109</p> <p>1 concluded that there were many, many carcinogens 2 in cigarette smoke, correct? 3 A. I don't know when you say many, many. 4 Q. More than two dozen, sir? 5 A. I don't know the answer to that 6 question. 7 Q. Are you aware that there are at 8 least -- 9 A. Some. 10 Q. -- a couple of dozen or more known 11 carcinogens in cigarette smoke? 12 A. No. I'm not aware that there are. 13 That doesn't mean to say there aren't, but I'm 14 not aware of it. 15 Q. You were the person who, I thought, 16 made the decisions for Philip Morris as to what 17 their position was on cigarette smoking and 18 health. Am I wrong? 19 MR. GARNICK: Objection to the form. 20 Q. As president of Philip Morris USA, did 21 you not make the decision as to whether or not</p>

<p>Page 110</p> <p>1 there was a relationship between cigarette 2 smoking and health? 3 A. No. I didn't. 4 Q. Who made that decision for Philip 5 Morris? 6 A. I really don't think that the answer 7 can be -- I don't think I can answer that. That 8 was not a decision made by one person. 9 Q. Tell us the names of the people who 10 made that decision. 11 A. I can't really do that. I think that 12 the final decision as to the corporate posture 13 would be made by the chairman. 14 Q. What do you mean by "corporate 15 posture"? 16 A. Corporate feeling or corporate decision 17 on smoking and health would be made by the 18 chairman. 19 Q. Isn't it just a scientific issue, sir? 20 A. I don't think the scientific issue has 21 been resolved.</p>	<p>Page 113</p> <p>1 that would be the knowledge I would have at that 2 time, yes. 3 Q. You would have no reason to why 4 question him as to whether or not he was right in 5 identifying dozens of carcinogens in cigarette 6 smoke, would you? 7 MR. HAFETZ: Objection. 8 A. I never heard of dozens of carcinogens. 9 Q. I want to see if I can refresh your 10 memory. 11 MR. EDELL: Why don't we go off the 12 videotape a second while I look this up, okay. 13 VIDEO OPERATOR: We're going off the 14 record. The time is 11:57 a.m. 15 (Discussion off the record.) 16 VIDEO OPERATOR: Back on the record, the 17 time is 11:57 a.m. 18 Q. Sir, what is the Philip Morris Research 19 and Development Committee? Ever heard of it? 20 A. No. I'm sure I have. I'm sorry, I 21 can't really call up that particular committee.</p>
<p>Page 111</p> <p>1 Q. I understand that. But is it not a 2 scientific issue as to whether or not there is a 3 relationship between cigarette smoking and 4 health? 5 A. I guess eventually there would be. 6 Q. It is not a marketing decision, is it? 7 A. No. 8 Q. It is not an advertising decision, is 9 it? 10 A. No. It is not. 11 Q. It is not a legal decision, is it? 12 A. No. 13 Q. It is a scientific and medical 14 decision, correct? 15 A. Yes. 16 Q. The person with the most training 17 regarding that issue at Philip Morris was 18 Dr. Wakeham; correct? 19 A. No. He has no medical training. 20 Q. He has the most scientific training; 21 isn't that correct?</p>	<p>Page 114</p> <p>1 If you will refresh my memory-- 2 Q. I'll do my best. I will show you a 3 document marked as P-12784. It is a presentation 4 to R&D Committee by Dr. Wakeham at a meeting held 5 in the New York office on November, can't read 6 the date, looks like maybe the 15th, 1961. 7 A. 1961? 8 Q. Yes, sir. You were with Philip Morris 9 at the time? 10 A. Yeah. 11 Q. Were you in New York? 12 A. Yeah. But I was in charge of 13 operations at that time. 14 Q. You were? 15 A. Yeah. 16 Q. Therefore, you would have had 17 responsibility over Dr. Wakeham, correct? 18 A. Yes. I would have. 19 Q. And I direct your attention to the 20 eleventh page of the document. You see where it 21 says: "Partial list of compounds in cigarette</p>
<p>Page 112</p> <p>1 A. He has no medical training. 2 Q. Scientific, scientific training? 3 A. Yes. 4 Q. The person with the most scientific 5 training at Philip Morris was Dr. Wakeham, 6 correct? 7 A. Correct. 8 Q. If he identified dozens of carcinogens 9 in cigarette smoke, you would have to defer to 10 him on that issue, correct? 11 MR. HAFETZ: Objection. 12 Q. You don't have the same training he 13 does, do you? 14 A. No. I don't. 15 Q. So you would have to defer on him on 16 that issue? 17 MR. HAFETZ: Objection. 18 Q. It is not a matter of corporate 19 decision? 20 A. I don't think it is a question of 21 deferring. I hear what he says, and as far as</p>	<p>Page 115</p> <p>1 smoke also known as carcinogens?" 2 MR. HAFETZ: You said page eleven -- 3 MR. EDELL: You have to just count the 4 pages. They are not numbered. 5 MR. HAFETZ: Bates O1FB0018. 6 MR. EDELL: Whatever, it is the 7 eleventh page. It is a partial list of compounds 8 in cigarette smoke also identified as 9 carcinogens, counsel? 10 MR. HAFETZ: Make sure we're on the 11 right page. 12 MR. EDELL: Does that page of yours say 13 that, or you don't want to make that statement. 14 MR. HAFETZ: We do want to make a 15 statement. Slow down, Mr. Edell. 16 MR. EDELL: You have it in front of 17 you. 18 MR. HAFETZ: We're going to place in 19 front of-- yes, we're going to place in front of 20 the witness the same page of the document you 21 just referred to, so he has the same page you</p>

Page 116

1 does. He does now, and go.
2 Q. Okay. He's got it. Got it, Doctor?
3 I'm sorry, Mr. Goldsmith, have you got
4 Dr. Wakeham's presentation?
5 A. Yes. It must be.
6 Q. You weren't aware that these were all
7 of the compounds in cigarette smoke identified as
8 carcinogens by Dr. Wakeham?
9 A. No. I wasn't aware. If you will just
10 notice here, there was one, two, three, four,
11 five, six, seven, eight of them are benzopyrene
12 and they are all known as one, so I'm not --
13 Q. They are all known as hydrocarbons?
14 A. Yes. But you talk about dozens of
15 them.
16 Q. You were aware of arsenic?
17 MR. HAFETZ: Excuse me. I think he was
18 in the middle of a--
19 MR. EDELL: I'm sorry.
20 MR. HAFETZ: Please let the witness
21 finish his answer. Can we have back the last

Page 117

1 question and the part of the answer he was on?
2 You interrupted him, Mr. Edell.
3 MR. EDELL: I apologize, Mr. Goldsmith.
4 MR. HAFETZ: Can we have it read back?
5 MR. EDELL: Absolutely.
6 (The record was read by the reporter.)
7 Q. Were you going to add something, sir?
8 A. I was going to say that here is an item
9 on here that is glucose.
10 Q. Right.
11 A. To me, as far as I'm concerned -- and
12 fructose, they are not carcinogens.
13 Q. You know that they are not carcinogens
14 when they are found in smoke and you inhale them
15 into your lungs?
16 A. I don't know. I don't think
17 Mr. Wakeham knew in '61, Dr. Wakeham.
18 Q. It does say partial list of compounds
19 in cigarette smoke also identified as
20 carcinogens, correct?
21 A. That's what it says up here. I'm

Page 118

1 trying to point out to you, that just because it
2 says that, doesn't mean it has to be true.
3 Q. Oh, I know that. But just because you
4 say it might not be doesn't mean that Dr. Wakeham
5 is wrong, is that correct?
6 MR. HAFETZ: Objection.
7 A. No. It does not.
8 Q. And were you aware at that time that
9 there were, back in '61, that there were
10 statistical studies showing an increase in the
11 prevalence of lung cancer in cigarette smokers
12 versus nonsmokers, correct?
13 A. An increase, would you rephrase that,
14 please?
15 Q. Sure. Maybe what we can do, let's
16 refer to Dr. Wakeham's presentation, it is on the
17 eighth page. See where it says "evidence linking
18 cancer and tobacco"?
19 A. Yes.
20 Q. First it says statistical evidence that
21 certain diseases are more prevalent, that is,

Page 119

1 they are found more frequently in smokers versus
2 nonsmokers?
3 A. Yes.
4 Q. Lung cancer, bladder cancer, and
5 cardiovascular diseases?
6 A. Yes, it says that.
7 Q. And that these studies show the
8 association that suggests that cigarette smoking
9 may be a causative factor; that's what
10 Dr. Wakeham wrote in '61, correct, sir?
11 A. Yes.
12 Q. Did Philip Morris publish Dr. Wakeham's
13 opinion at that time?
14 A. No, not to my knowledge. I should say
15 I don't know.
16 Q. I'm sorry?
17 A. Not to my knowledge.
18 Q. You would have let him publish that, if
19 it was up to you; is that what you are saying?
20 A. No. I would not have.
21 Q. You would not have let him?

Page 120

1 A. No.
2 Q. He also says that the physiological
3 tests in animals showed an increase in tumors in
4 animals receiving smoke condensate being painted
5 on the backs, correct?
6 A. It says that on there, yes, sir.
7 Q. You have no reason to disagree with
8 that fact, do you, sir?
9 A. I have no reason to disagree or agree.
10 Q. You had statistical studies, correct,
11 that showed a relationship between cigarette
12 smoking and disease?
13 A. Right.
14 Q. You had animal studies that showed a
15 relationship between the smoke condensate from
16 cigarette smoke and tumors, correct?
17 MR. GARNICK: Objection to the form.
18 Q. Correct?
19 A. Correct.
20 Q. And you had compounds that were found
21 in cigarette smoking that were carcinogenic,

Page 121

1 correct?
2 A. Correct.
3 Q. What didn't you have, sir?
4 MR. HAFETZ: Objection. Objection to
5 form.
6 A. We didn't have any information that
7 smoking ever caused -- the data here was on
8 animals. There was no laboratory data that
9 animals ever got cancer on inhalation of smoke.
10 Q. There were, there were animal studies
11 that were performed by Dr. Dantenwill and Drs.
12 Leuchtenberger and Dr. Homberger who found tumors
13 in animals exposed to whole smoke, correct?
14 MR. HAFETZ: Excuse me. May we fix a
15 time frame for the question?
16 MR. EDELL: During the time he was with
17 Philip Morris.
18 MR. HAFETZ: You are questioning on a
19 document related to 1961.
20 MR. EDELL: Yes. I am. The question
21 is broad. Okay?

Page 122

1 A. I don't remember that.
2 Q. You don't know Dr. Dontenwill?
3 A. I remember the name.
4 Q. Do you know whether he did inhalation
5 studies?
6 A. No. I don't know that.
7 Q. Do you know the Leukenbergers?
8 A. No.
9 Q. You ever hear of them?
10 A. No.
11 Q. Ever heard of Dr. Homberger?
12 A. Yes.
13 Q. You are not aware that he found in his
14 study that he performed for the Council for
15 Tobacco Research, which was an inhalation study
16 on Syrian hamsters, he found tumors, laryngeal
17 tumors?
18 A. Tumors?
19 Q. Yes, cancer.
20 A. I don't know. You are telling me. I
21 don't know anything about it.

Page 123

1 Q. You don't remember that?
2 A. I don't remember that. I'm sure I must
3 have. I don't remember.
4 Q. Well, you are certainly familiar with
5 Dr. Auerbach's study, correct, the smoking dog
6 study?
7 A. I remember that, yes.
8 Q. And you are familiar with the fact that
9 he found invasive cancers in the dogs that were
10 smoking, correct?
11 A. My recollection is that Dr. Auerbach
12 was discredited in his study.
13 Q. We can get to that. Certainly, the
14 tobacco industry tried to discredit him, did they
15 not, took out full pages in the newspapers
16 throughout the country trying to discredit his
17 research, isn't that correct?
18 A. I don't like the word "try".
19 Q. You did. You did successfully
20 discredit him?
21 A. I think we did.

Page 124

1 Q. You didn't disclose to him that, in
2 fact, Dr. Fagan who was in the research and
3 development facility, was given total access to
4 all of Dr. Auerbach's research materials, did
5 you?
6 MR. GARNICK: Objection to form.
7 A. I don't remember anything about
8 Dr. Fagan and what he had access to, no.
9 Q. The way you tried to discredit him or
10 successfully discredited him, was suggesting that
11 Dr. Auerbach didn't make his data available; is
12 that correct?
13 A. That's not my recollection.
14 Q. Then how did you discredit him?
15 A. That the slides were not conclusive.
16 That's my recollection.
17 Q. You don't remember that the ad campaign
18 was simply to leave the suggestion in the
19 reader's mind that Dr. Auerbach did not cooperate
20 in providing his data?
21 MR. HAFETZ: Objection and objection to

Page 125

1 form.
2 Q. Sir?
3 A. No. I don't remember.
4 Q. Let me see if I can refresh your memory
5 then.
6 MR. EDELL: Want to put in a new tape?
7 VIDEO OPERATOR: We are going off the
8 record to change the tapes. This is the end of
9 tape one. The time is 12:08 p.m.
10 MR. HAFETZ: As long as we're off the
11 record--
12 MR. EDELL: No, we're not going to take
13 a break right now.
14 MR. HAFETZ: I would like to take a
15 break for lunch at 12:30.
16 MR. EDELL: You got it.
17 MR. HAFETZ: Have patience, Mr. Edell.
18 (Discussion off the record.)
19 VIDEO OPERATOR: Back on the record,
20 the time is 12:10 p.m.
21 Q. I'm going to show you a document marked

Page 126

1 as 14109, and this is the, as you described it,
2 successful effort by the tobacco industry to
3 discredit Dr. Auerbach. This is one of the
4 advertisements that was placed by the Tobacco
5 Institute in newspapers throughout the country.
6 This particular one was in the Baltimore Sun.
7 Do you remember this ad campaign, sir?
8 A. No. I don't.
9 Q. Did you read it?
10 A. Did I read it now?
11 Q. Yes.
12 A. I just have to look at it. I don't
13 remember the ad campaign. I didn't remember at
14 all that we placed any ads in newspapers.
15 I skimmed it. I didn't read every word
16 of it.
17 Q. You see where it contains a series of
18 letters between Mr. Cullman, chairman of the
19 board of Philip Morris, as well as chairman of
20 the executive committee of the Tobacco
21 Institute?

Page 127

1 A. Yes.
2 Q. To a Mr. Louis, chairman of the
3 American Cancer Society, where he says, you know,
4 we have requested access to Dr. Auerbach's
5 research results, yes?
6 A. Yes.
7 Q. He indicates that Philip Morris was
8 refused access to that; isn't that correct?
9 A. That's what it says in here.
10 Q. Do you know who Dr. Fagan is?
11 A. I don't remember his name.
12 Q. You remember he was in research and
13 development?
14 A. He worked for the Research Department,
15 yes.
16 Q. When you say "the Research Department"
17 are you talking about Philip Morris?
18 A. Yes.
19 Q. He worked with Dr. Wakeham, correct?
20 A. Yes.
21 Q. He worked with Dr. Wakeham relating to

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<p>Page 128</p> <p>1 the Auerbach smoking dog experiment? 2 A. I do not remember that. 3 Q. Let me see if I can refresh your 4 memory. I will show you a February 23, 1972 5 memorandum from Dr. Wakeham. 6 MR. GARNICK: Marc, do you have an x-ray 7 copy of that? 8 MR. EDELL: Yes. I do. As a matter of 9 fact, I have two extra copies. 10 Q. This is a memorandum from Dr. Wakeham. 11 to you, Mr. Holtzman and Dr. Fagan, correct? 12 A. Says here to file. 13 Q. If you turn to the last page, sir. 14 A. It says copies to me. It is not 15 addressed to me, it is addressed to file. 16 Q. Okay, copies are sent to Clifford H. 17 Goldsmith, correct? 18 A. To me. 19 Q. Your position in 1972 was what, head of 20 operations for Philip Morris? 21 A. Yes.</p>	<p>Page 131</p> <p>1 understand. You are not saying something 2 definitive, no, I didn't participate in it, you 3 are simply saying you don't remember it, correct? 4 A. I don't remember. 5 Q. Okay. Did anybody ever talk to you 6 about the difference between saying I don't 7 recall as opposed to saying no -- 8 MR. HAFETZ: Objection. 9 Q. Let me finish the question. And the 10 ramifications it might mean to you in the context 11 of the federal investigation? 12 MR. HAFETZ: Objection. Direct the 13 witness not to answer. 14 Q. Other than your lawyer, did anybody 15 ever discuss that with you? 16 A. No. 17 Q. I'm going to show you a memorandum 18 marked as P-12851, it is a memorandum from R. 19 Fagan to Dr. H. Wakeham, February 25, 1972. I'm 20 sorry, it is 1970. I'm sorry. It is a couple of 21 months before the advertisement, the May 4, 1970</p>
<p>Page 129</p> <p>1 Q. Corporate officer? 2 A. Yes. 3 Q. Member of the board of directors? 4 A. Yes. 5 Q. And Alex Holtzman, his position was 6 legal counsel for Philip Morris, in-house, 7 correct? 8 A. Yes. 9 Q. And Dr. Fagan? 10 A. Yes. 11 Q. It does relate to attempts to repeat 12 Dr. Auerbach's smoking dog experiment, is that 13 correct? 14 A. Yes. 15 Q. Does it jog your memory as to who 16 Dr. Fagan was? 17 A. No. He is just being copied on here. 18 Q. Is it your testimony that you were the 19 management of Philip Morris, specifically, your 20 fellow board member -- let me back up a little 21 bit.</p>	<p>Page 132</p> <p>1 advertisement we were just discussing. 2 Mr. Goldsmith? 3 A. Yes. I'm reading, I can't do two 4 things at one time. 5 Q. I apologize, I want you to tell me 6 whether I'm right that it predates the 7 advertisement that we have just been discussing 8 where Mr. Cullman suggests that Philip Morris has 9 not had access to Mr. Auerbach's work; correct? 10 A. Yes. It does. 11 Q. This memorandum is from Dr. Wakeham -- 12 sorry, Dr. Fagan to Dr. Wakeham regarding 13 Auerbach's smoking beagle study, correct? 14 A. Correct. 15 Q. That's the same study that is the 16 subject of the advertisement that we just 17 discussed? 18 A. That's correct. 19 Q. And you are aware -- you weren't aware, 20 I guess, that Dr. Fagan was a veterinary doctor? 21 A. No.</p>
<p>Page 130</p> <p>1 Did you participate at all in the 2 decision to place this ad? 3 A. No. 4 Q. When you say "no" you say you -- why 5 wouldn't you have participated in that process? 6 MR. GARNICK: Objection to the form. 7 MR. EDELL: Sorry? 8 A. I wasn't involved in that type of 9 decision at that time. I don't know. 10 Q. When you say "that type of decision" 11 what do you mean? 12 A. To publish this sort of thing. 13 Q. Did you finish, Mr. Goldsmith? 14 A. I wouldn't have made that sort of 15 policy. I wasn't involved. 16 Q. You weren't involved in it? 17 A. I don't remember it. 18 Q. That's different. You don't remember 19 it? 20 A. Yes. 21 Q. I just want to make sure we</p>	<p>Page 133</p> <p>1 Q. You weren't aware of that? 2 A. No. 3 Q. That he has a degree in veterinary 4 medicine, you are not aware of that? 5 A. No. 6 Q. And the suggestion in the ad is that 7 Philip Morris wasn't given access to take a look 8 at the slides, correct, upon which they base the 9 statement, Dr. Auerbach based the statement that 10 they were tumors, correct? 11 A. Right. 12 Q. Now, I direct your attention to 13 paragraph six, where he says, and this, again, 14 just so the jury understands, this relates to a 15 meeting that Dr. Fagan had with Dr. Auerbach, 16 correct? 17 A. Correct. 18 Q. The paragraph says: "Dr. Auerbach 19 showed me photomicrographs of what looked, to my 20 nonexpert eye, as typical invasive carcinoma." 21 You see that, sir?</p>

<p style="text-align: right;">Page 134</p> <p>1 A. I see that. 2 Q. He read me a report from Dr. John Byrd, 3 NCI, you know what NCI means? 4 A. Yes, sir. 5 Q. What does it mean? 6 A. National Cancer Institute. 7 Q. Which corroborates this diagnosis, 8 What does that mean? 9 A. He agrees with that diagnosis. 10 Q. Of invasive carcinomas found in the 11 dogs, correct? 12 A. Correct. 13 Q. Dr. Auerbach showed me several 14 notations in which Dr. S. Neilson, veterinary 15 pathologist, agrees with Auerbach's reading of 16 sides, correct? 17 A. That's what it says here, sir. 18 Q. Did Dr. Fagan state in this memorandum 19 that there was anything that Dr. Auerbach refused 20 to give him access to? 21 MR. HAFETZ: Objection. Document speaks</p>	<p style="text-align: right;">Page 137</p> <p>1 to make any material available to Philip Morris 2 employee, Dr. Fagan? 3 MR. GARNICK: Objection to form. 4 A. All I can tell you is that in this 5 memorandum, Dr. Fagan does not say he was refused 6 any data. 7 Q. Is it fair to say he was given access 8 to whatever he asked for? 9 A. I can't answer that. That doesn't say 10 that. 11 Q. You didn't review his testimony in 12 these cases; is that correct? 13 A. Pardon me, sir? 14 Q. You didn't review his videotaped 15 testimony in these cases? 16 A. No. I did not. 17 Q. Would you be surprised if he testified 18 under oath, that he was given access to anything 19 and everything that he asked for from 20 Dr. Auerbach? 21 MR. HAFETZ: Objection to form.</p>
<p style="text-align: right;">Page 135</p> <p>1 for itself. 2 MR. EDELL: Read it. 3 A. The document speaks for itself, sir. 4 He doesn't say anything in here that I have read 5 in the time you showed me this memo. 6 Q. Take your time, please. 7 A. It doesn't say anything that he was 8 refused to look at a specific slide; but it 9 doesn't mean anything to me. 10 Q. It doesn't mean anything to you? 11 A. No. It doesn't. The entire matter of 12 Auerbach and the I have no recollection of it, 13 other than my recollection was Dr. Auerbach was 14 discredited, that the report was not correct, 15 period. 16 Q. The tobacco industry tried to discredit 17 him, correct? 18 A. No. I said the tobacco industry did, 19 in fact, discredit him. 20 Q. By putting this ad in the newspaper, 21 correct?</p>	<p style="text-align: right;">Page 138</p> <p>1 A. I don't think it matters whether I 2 would be surprised or not surprised. If that is 3 what he testified, that's what he testified. 4 Q. Do you have any reason to believe he is 5 not telling the truth? 6 MR. HAFETZ: Objection. 7 A. I don't know whether Dr. Fagan told the 8 truth or not. 9 Q. Do you have any reason to believe that 10 he is not telling the truth? 11 MR. HAFETZ: Objection. 12 A. As I say, neither one way or the other. 13 Q. If you will wait one second, I will 14 pull up the testimony itself. 15 Page 256 of his deposition testimony 16 taken in this case, under the same circumstances 17 we are dealing with here, the following question 18 and answer was given by Dr. Fagan: 19 Question: The best of your knowledge, 20 he didn't withhold any information from you, that 21 is what you are saying? He being Dr. Auerbach.</p>
<p style="text-align: right;">Page 136</p> <p>1 A. I didn't say that. 2 MR. HAFETZ: Objection. 3 Q. How then? 4 A. I said I didn't recollect the exact 5 facts, but my recollection is that the industry 6 did discredit him. 7 Q. When you say but you don't remember how 8 they discredited him? 9 A. No. I don't. 10 Q. Do you have any reason to believe that 11 they discredited him in any other manner other 12 than this advertisement we have been talking 13 about? 14 A. I have no reason to believe anything. 15 I don't remember the incident or the details of 16 the incident. 17 Q. Would you please take your time, take a 18 look and read Dr. Fagan's memorandum to 19 Dr. Wakeham which came before this ad campaign by 20 the tobacco industry to discredit Dr. Auerbach 21 and tell us whether or not Dr. Auerbach refused</p>	<p style="text-align: right;">Page 139</p> <p>1 Answer: Whatever I asked for, I got. 2 So he didn't withhold anything. 3 Do you have any reason to believe that 4 Dr. Fagan was not testifying truthfully when he 5 testified to that effect? 6 MR. HAFETZ: Objection. Objection. 7 A. I have no way of knowing whether he 8 testified truthfully or not. 9 MR. EDELL: Okay. 12:30, break for 10 lunch. 11 VIDEO OPERATOR: We're going off the 12 record. The time is 12:25 p.m. 13 (Luncheon recess.) 14 VIDEO OPERATOR: One moment. We're 15 back on the record, the time is 1:32 p.m. 16 Q. Mr. Goldsmith, during the luncheon 17 break, did you speak with any of your lawyers? 18 A. Yes. 19 Q. Can you tell us what they told you? 20 MR. HAFETZ: Direction not to answer. 21 Q. Did any of the discussions with your</p>

<p>Page 140</p> <p>1 lawyers relate to any of the documents that we 2 went over this morning? 3 MR. HAFETZ: Direction not to answer. 4 Q. Were you shown any documents over the 5 lunch hour? 6 MR. HAFETZ: Direction not to answer. 7 MR. EDELL: He can testify as to 8 whether he was shown documents, counsel. Maybe 9 you want to take a position on the fact as to 10 what documents he was shown, but he certainly can 11 testify as to whether he saw a document. 12 MR. HAFETZ: I disagree with you, but 13 we'll let him answer that. 14 A. I didn't see any documents. 15 Q. Were any documents read to you? 16 A. No. 17 Q. The content of any documents discussed 18 with you? 19 MR. HAFETZ: Direction not to answer. 20 Q. You told us before the luncheon break 21 that you really did not participate in this</p>	<p>Page 143</p> <p>1 be effective with respect to that earlier 2 document. 3 MR. EDELL: No. We can have for of any 4 documents that fall within that, or under that 5 umbrella. 6 MR. GARNICK: Okay. 7 Q. All right. Will you tell the jury what 8 your involvement was at, respecting the 9 industry's research efforts regarding cigarette 10 smoking and health? 11 A. What time frame, Mr. Edell? 12 Q. Did it change at different points in 13 time? 14 A. Yeah. 15 Q. When was your earliest involvement, 16 tell us when that was and what was your 17 involvement regarding the industry research 18 respecting cigarette smoking and disease. 19 A. Now, I'm not quite sure whether it was 20 at the time that I became president of USA or 21 whether I became president of the corporation.</p>
<p>Page 141</p> <p>1 smoking and dog issue? 2 A. That's correct, sir. 3 Q. I am going to show you a document we 4 have marked as 14113. It is a memorandum from 5 Mr. Millhiser to Mr. Paul D. Smith, April 17, 6 1970. It is marked "confidential"; is that 7 correct, sir? 8 A. Yes. Uh-huh. 9 Q. And tell the jury who Paul D. Smith was 10 or is? 11 A. He was a Philip Morris lawyer. 12 Q. Mr. Millhiser in 1970, what position 13 was he in? 14 A. I don't remember now. 15 Q. The subject of the memorandum is the 16 smoking dogs; is that correct? 17 A. Yes. That's correct. 18 Q. And will you tell the jury who received 19 copies of this document? 20 A. Mr. Goldsmith, Mr. Landry and 21 Mr. Holtzman.</p>	<p>Page 144</p> <p>1 It was at one time that I then attended meetings 2 of the Council for Tobacco Research. 3 Q. That was your only involvement? 4 A. Yes. 5 Q. Respecting research performed by the 6 cigarette industry into cigarette-related 7 diseases? 8 A. Well, the industry efforts through the 9 Council of Tobacco Research, I had nothing to do 10 with that until I became a director of the 11 Council for Tobacco Research and then it involved 12 strictly matters such as reports by the Council 13 for Tobacco Research and budgetary issues, 14 matters of that kind. 15 Q. Weren't you involved in a committee 16 established by the industry to oversee all of the 17 industry's research, including both through the 18 CTR, that is the Council for Tobacco Research, as 19 well as other independent projects? 20 A. I don't recollect being on such a 21 committee.</p>
<p>Page 142</p> <p>1 Q. Can you tell us why you would be 2 receiving copies of this document relating to an 3 issue that you say you are not involved in? 4 A. No. 5 Q. It doesn't refresh your memory, I 6 assume? 7 A. No. It does not. 8 MR. GARNICK: Mr. Edell in order to 9 avoid interrupting the deposition, which I do not 10 want to do, can we have a continuing 11 understanding with respect to all of the 12 documents that might come from the, what I will 13 call the Bleily collection, the 37,000 or the 14 39,000, the stipulation we discussed before, is 15 it in effect? 16 MR. EDELL: Same one we agreed to 17 earlier? 18 MR. GARNICK: Yes. 19 MR. EDELL: Yes. That's for the whole 20 deposition, not just this morning. 21 MR. GARNICK: Okay, I understood it to</p>	<p>Page 145</p> <p>1 Q. You don't remember spending a number of 2 years on that committee reviewing and determining 3 what research should or should not be funded by 4 the industry respecting cigarette smoking and 5 disease? 6 A. I remember being on the board of CTR 7 but no special committee. I have no recollection 8 of that. 9 Q. Let's see if we can refresh your 10 memory. I'll first show you a document we have 11 marked as Plaintiff's Exhibit 14075. It is a 12 letter from William Smith, I believe, do you know 13 who William S. Smith was? 14 A. No. I don't remember. 15 Q. You don't remember him being chairman 16 of R. J. Reynolds? 17 A. No. 18 Q. It is on the letterhead of R. J. 19 Reynolds? 20 A. Okay. I'll take your word for it. 21 Q. It says William S. Smith, chairman,</p>

<p>Page 146</p> <p>1 yes? 2 A. Yes. 3 Q. Dated April 29, 1974? 4 A. Correct. 5 Q. Am I correct? 6 A. Correct. 7 Q. It says addressed to H. H. Ramm. Did 8 you know Henry Ramm? 9 A. I think he was a Reynolds lawyer, I'm 10 not sure. 11 Q. He was a Reynolds lawyer and then went 12 in-house with the Council for Tobacco Research, 13 the independent research entity we've been 14 discussing? 15 A. Yes. 16 Q. The document states: Agreement has now 17 been reached with each of the major manufacturers 18 as to their representative who will serve on a 19 committee to study the research programs funded 20 by our industry, both through CTR and independent 21 projects that are brought to us from time to</p>	<p>Page 149</p> <p>1 is 25 years ago. 2 Q. I understand. Let's see if we can 3 again refresh your memory a little bit. Figure 4 if we maybe go through the years, we can show you 5 how long you were involved in that effort, it 6 might jog your memory. 7 MR. GARNICK: Objection and move to 8 strike that statement by counsel. 9 Q. Going to show you a document -- these 10 are multiple documents. I don't want to confuse 11 the matter. 12 Plaintiff's Exhibit 13457, it is a 13 letter from David Hardy, again, the lawyer who 14 represented Philip Morris and who was very much 15 involved in the industry's research efforts, 16 correct? 17 A. Correct. 18 Q. And it is addressed to a number of 19 individuals, William Bates, you remember him as 20 being a member of what you will see in this 21 correspondence referred to as the Research</p>
<p>Page 147</p> <p>1 time. The following individuals will represent 2 their companies, and it is hoped this committee 3 can have their first meeting promptly: Curtis H. 4 Judge. He was CEO of Lorillard, right? 5 A. Right. 6 Q. Clifford H. Goldsmith, Philip Morris, 7 Inc., H. H. Roemer, R.J. Reynolds Tobacco 8 Company. Do you know him? 9 A. I don't remember him. 10 Q. Cyril S. Hetko? 11 A. I don't remember him. Hughes I 12 remember. 13 Q. Hughes was in research; is that right? 14 A. I think he was. 15 Q. For Brown & Williamson, sir? 16 A. Yes. That's correct. 17 Q. William W. Bates, research for Liggett 18 Myers? 19 A. Right. 20 Q. David Hardy, you know who David Hardy 21 was?</p>	<p>Page 150</p> <p>1 Liaison Committee, Dr. Bates was a member, 2 correct? 3 A. I don't remember. If you say so, he 4 was. 5 Q. If you will look at the earlier 6 document, which is 14075, do you have it in front 7 of you? 8 A. Yes. You asked me if it was correct, I 9 don't remember it. It says so in here, it must 10 be. 11 Q. Okay. Clifford Goldsmith. You are 12 listed on there? 13 A. That's me. 14 Q. And you are also listed in Mr. Smith's 15 letters setting forth the individuals who will 16 serve on this committee, as is Mr. Judge, 17 correct? 18 A. Right. 19 Q. And Dr. Hughes? 20 A. Right. 21 Q. Just going back and forth. And</p>
<p>Page 148</p> <p>1 A. Yes. 2 Q. He was the outside lawyer who was very 3 much involved in gather smoking and health 4 litigation funded by the industry, correct? 5 A. I remember him. 6 Q. He represented Philip Morris in 7 litigation? 8 A. Yes. He did. 9 Q. He represented other tobacco companies, 10 correct, in litigation? 11 A. I don't know about that. 12 Q. His firm is Shook Hardy & Bacon, 13 correct? 14 A. Correct. 15 Q. Does this refresh your memory that you 16 were in a committee established to review the 17 industry smoking and health litigation -- I'm 18 sorry -- research? 19 A. It does not, I'm sorry. 20 Q. It doesn't. I'm sorry, sir? 21 A. I say I don't remember that at all. It</p>	<p>Page 151</p> <p>1 Mr. Roemer, correct? 2 A. Right. 3 Q. And Horace Kornegay is listed. He 4 wasn't part of this committee directly, he was 5 the head of the Tobacco Institute, correct? 6 A. Correct. 7 Q. And then we have William Kloepper, he 8 was public relations counsel to the Tobacco 9 Institute, correct? 10 A. If you say so. 11 Q. His name sound familiar to you? 12 A. His name sounds familiar. 13 Q. Leonard Zahn, public relations counsel 14 for the Council for Tobacco Research? 15 A. I remember his name. 16 Q. And it encloses a letter from Ed 17 Jacobs. You know who Ed Jacobs was? 18 A. I don't recollect what his job was. 19 Q. You remember he was a lawyer though 20 involved, another lawyer involved in the 21 industry's research efforts?</p>

<p>Page 152</p> <p>1 A. I don't remember that. 2 Q. It refers to the Research Liaison 3 Committee. This doesn't refresh your memory that 4 you were on the Research Liaison Committee? 5 A. No. It does not. 6 Q. Okay. 7 A. Again, I must tell you, I sound 8 evasive, but I don't remember it. 9 Q. I'm going to keep working at it and see 10 if I can jog your memory. 11 A. I'm sorry, but I just do not remember. 12 Q. Let's move to 1976, two years after the 13 establishment of the Research Liaison Committee. 14 I'm going to show you Exhibit 13379, it 15 is document on the letterhead of Philip Morris 16 from Dr. Wakeham to whom, sir? 17 A. To me. 18 Q. Clifford H. Goldsmith, July 30, 1976, 19 and will you please tell the jury what the 20 subject of the memorandum is? 21 A. Comments on the meeting of the Research</p>	<p>Page 155</p> <p>1 Council for Tobacco Research?" 2 Q. In other words, there was research, for 3 example, at UCLA and other places, that was 4 funded outside of the Council for Tobacco 5 Research, okay? 6 A. By whom? 7 Q. Directly by the companies. You don't 8 remember that? 9 A. The company funded research at such a 10 place as, for example, UCLA? 11 Q. Correct. 12 A. On smoking and health outside of the 13 Council for Tobacco Research? 14 Q. Correct. 15 A. I don't remember that. 16 Q. You are not aware of that, or you don't 17 remember that being the case? 18 A. I don't remember that. 19 Q. Are you aware -- well, you are aware 20 that there was a committee set up to look at the 21 industry-funded research, is that correct?</p>
<p>Page 153</p> <p>1 Liaison Committee at CTR on July 28th, 1976. 2 Q. You didn't attend that meeting, but 3 there were other representatives of Philip Morris 4 at that meeting in your state; is that correct? 5 A. Alex Holtzman was there. 6 Q. And Dr. Wakeham was there? 7 A. And Dr. Wakeham was there. 8 Q. Right? 9 A. Correct. 10 Q. And attached to it is the outline of 11 the agenda at the meeting. Do you have any 12 reason why you were getting a copy of this? 13 A. I suppose Dr. Wakeham felt he should 14 keep me informed. 15 Q. For any particular reason he should 16 keep you informed of the efforts of the Research 17 Liaison Committee? 18 A. I can't guess at that. 19 Q. Was there anything about your position 20 with the company that would have led Dr. Wakeham 21 to have sent you copies of such documents?</p>	<p>Page 156</p> <p>1 A. According to what you just showed me, 2 yes. 3 Q. Are you aware of what the results were 4 of that committee, the committee's efforts? 5 A. No. I'm not. 6 Q. Would you be surprised to find out that 7 the result of their review led them to conclude 8 that much of the research didn't relate to 9 cigarette smoking and health? 10 MR. HAFETZ: Objection to form. 11 A. How can I know today whether I would 12 have been surprised 26 years ago? 13 Q. No, I'm asking you today, sir. 14 A. I don't know whether all the work by 15 the council was directly related to smoking and 16 health or was only related in a more indirect 17 manner. I don't know that. 18 Q. You don't remember your involvement in 19 that procedure? 20 A. No. I do not. I really do not. 21 Q. You understand though that the</p>
<p>Page 154</p> <p>1 A. Probably, because I was, at that time, 2 president of Philip Morris USA. 3 Q. Do you know what the results were of 4 the industry's review of the research that was 5 funded both independently and through the Council 6 for Tobacco Research? 7 MR. HAFETZ: Objection. 8 A. Could you restate the question? I 9 don't fully understand it. 10 Q. Sure. Can we agree that there was a 11 committee, apparently, based upon these 12 documents? 13 A. That's correct. 14 Q. That reviewed the research funded by 15 the members of the tobacco industry? 16 A. That's correct. 17 Q. Both research funded through the 18 Council for Tobacco Research and independent of 19 the Council for Tobacco Research; is that a fair 20 statement? 21 A. What do you mean by "independent of the</p>	<p>Page 157</p> <p>1 industry-funded research is under scrutiny by the 2 Federal Government; is that correct? 3 A. I don't know about that, no. 4 Q. You weren't told that by your lawyers? 5 A. No. 6 MR. HAFETZ: Direction not to answer. 7 Direction not to answer any questions as to what 8 he was told by his lawyer. 9 Q. I'm going to show you a document which 10 has been marked as 13435. It relates to a site 11 visit at UCLA. 12 The second paragraph says: 13 Mr. Goldsmith tried to get Cline and the 14 vice-president of medical affairs, Rasmussen, to 15 commit themselves to the proposition that the 16 relationship between cigarette smoking and 17 diseases associated with the habit is not a 18 simple cause and effect one. 19 Do you see that, sir? 20 A. That's what it says here. 21 Q. You don't remember the research that</p>

<p>Page 158</p> <p>1 was being performed at UCLA with the entity with 2 which Dr. Cline was associated? 3 A. No, Mr. Edell. I do not. 4 Q. It goes on further to state that: I 5 don't think Mr. Goldsmith was happy with this 6 answer given by Dr. Cline. 7 Do you see where he says the reply you 8 got, being Mr. Goldsmith, was what we expect. We 9 know the situation is complex and that it needs 10 research. That is why we are asking for funds, 11 but we can't control what some of our colleagues 12 do and say. As a matter of fact, there are some 13 criticisms going to so-and-so. 14 Do you see that, sir? That doesn't jog 15 your memory of your discussion? 16 A. No. It does not jog my memory, but I'm 17 interested in it says: That's why we are asking 18 for funds. That doesn't say to me that they were 19 doing research at the time. 20 Q. You don't remember that Dr. Cline was 21 doing work out of UCLA?</p>	<p>Page 161</p> <p>1 content of cigarette smoke for DDT? 2 A. No. I don't remember. 3 Q. I show you a document we marked as 4 13361. It is a letter of July 17, 1968, together 5 with a letter from Dr. Wakeham to Dr., Professor, 6 I'm sorry, Chopra, at North Carolina Agricultural 7 and Technical State University. I'm not sure 8 whether it was included in the original document, 9 but it certainly follows the Bates stamp marking 10 from the files of Philip Morris. 11 Do you see this memo from Dr. Wakeham 12 to you in July of 1968? 13 A. Yes, I do, sir. 14 Q. Why would you be receiving a memo 15 respecting research being conducted at the 16 University of Kentucky? 17 MR. HAFETZ: Objection. 18 MR. EDELL: That's a form objection, 19 counsel? 20 MR. HAFETZ: Yes, sir. Speculation. 21 A. I don't know why Dr. Wakeham would send</p>
<p>Page 159</p> <p>1 A. No. 2 Q. On the second page of the document, 3 paragraph number four, it says: The evening 4 before the presentation by UCLA, Mr. Goldsmith 5 was vehement in a discussion with about Bill 6 Shinn about the benefits of smoking. 7 Mr. Goldsmith is anxious to find some reputable 8 investigator who would make the study and who 9 would write it up for publication. 10 Do you see that, sir? 11 A. Yes, sir. I do. 12 Q. Do you remember such a discussion? 13 A. No. 14 Q. Do you remember being a proponent of 15 someone performing a risk benefit study about 16 cigarette smoking? 17 A. I don't remember being a proponent of a 18 study, but I remember being interested in the 19 beneficial effects of smoking. 20 Q. Did you find a researcher to perform 21 such a study?</p>	<p>Page 162</p> <p>1 it to me. I guess he wanted to keep me informed. 2 Q. Was there anything in your position 3 with Philip Morris that would have warranted him 4 sending you a memorandum like this? 5 A. I was at that time chief of operations. 6 Q. Well, did that have anything to do with 7 industry-funded research? 8 A. I'm sorry, I have to finish reading the 9 memo. 10 Q. Sure go ahead. I'll give your lawyer 11 one so he can read it a little easier? 12 A. I'm either not reading it correctly or 13 I don't quite understand what this has to do with 14 the DDT. 15 Q. If you take a look at the -- 16 A. The second page. 17 Q. The letter that Dr. Wakeham sent in 18 response to the inquiry, I'm somewhat unsure as 19 to why Dr. Wakeham would be writing on behalf of 20 the Council for Tobacco Research. 21 He was not scientific director of the</p>
<p>Page 160</p> <p>1 A. To my knowledge, we never did find 2 anybody who would do it to our satisfaction. 3 Q. In the whole world, you couldn't find 4 anybody, Philip Morris Europe, Philip Morris USA, 5 Philip Morris International, with all its 6 facilities all over the world, couldn't find one 7 investigator to do that kind of research? 8 A. No. To my knowledge, Mr. Edell, it was 9 not done. That doesn't diminish my interest in 10 it. 11 Q. Do you remember -- excuse me one 12 second. 13 Do you recall, sir, that DDT was 14 identified in cigarettes? DDT, do you know what 15 DDT is? 16 A. Yes. Uh-huh. 17 Q. Tell the jury what DDT is. 18 A. It is a chemical used against insects. 19 Q. And do you remember that there was 20 research being performed at the University of 21 Kentucky under Dr. Stokes investigating the</p>	<p>Page 163</p> <p>1 Council for Tobacco Research, is he? 2 A. No, he wasn't. 3 Q. He was vice-president corporate 4 research and development for Philip Morris, 5 correct? 6 A. That's correct. 7 Q. But he writes Professor Chopra: I'm 8 sure the Council for Tobacco Research USA would 9 not want you to make brand comparisons on the 10 degradation of DDT, TDE and what is the last 11 word, sir? 12 A. I don't know. 13 Q. You are not familiar with it? 14 A. No. 15 Q. Some other type of pesticide probably? 16 A. I don't know. 17 Q. In cigarette smoke. Therefore, I 18 suggest in reply to the letter of July 9 that you 19 use in your tobacco studies the reference 20 cigarettes which will be available through the 21 tobacco research laboratory of the University of</p>

Page 164

1 Kentucky in Lexington, Kentucky. Your inquiry
2 should be addressed to Dr. G. W. Stokes, direct
3 for of the laboratory.
4 I think that a fair reading of this now
5 that is the industry developed a reference
6 cigarette, correct, at the University of
7 Kentucky?
8 A. Yes.
9 Q. At the University of Kentucky?
10 MR. GARNICK: Objection to the form.
11 Q. Is that right? Sir?
12 A. Yes.
13 Q. Sort of a vanilla cigarette, in other
14 words, it wasn't specific to any particular
15 brand; is that right?
16 A. That's correct.
17 Q. And for some reason, there was concern
18 on Dr. Wakeham's part that the researcher, who I
19 assume is Professor Chopra, not conduct a test
20 with respect to the degradation of DDT and TDE of
21 brands that were on the market.

Page 165

1 MR. HAFETZ: Objection.
2 MR. EDELL: Is that correct?
3 A. I don't understand why. I have no idea
4 why Dr. Wakeham wrote the memo, I'm not familiar
5 with it, and I don't know anything about that
6 work at all.
7 Q. Were you aware that there was DDT found
8 in cigarettes?
9 A. I know there was DDT found on tobacco.
10 Whether it migrated into the smoke of cigarettes,
11 I don't recollect.
12 Q. Certainly one way to have found out
13 about it would have been to let Professor Chopra
14 buy cigarettes in a store and do his studies on
15 the store, as opposed to giving him these
16 reference cigarettes; correct?
17 MR. HAFETZ: Objection. Objection to
18 form.
19 A. Mr. Edell, I don't know who Professor
20 Chopra was, and I have no recollection of it, and
21 I don't know why Dr. Wakeham wrote the memorandum

Page 166

1 or anything about it.
2 Q. How would you determine whether there
3 was DDT or TDE in Philip Morris cigarettes,
4 unless somebody tested your actual cigarettes?
5 A. If we wanted to determine that, I'm
6 sure we must have had the ability to do that on
7 the inside. I don't know or understand why we
8 would have used Professor Chopra. I don't know
9 anything about that.
10 Q. And during the time period that you
11 were president of Philip Morris USA, when was
12 that again?
13 A. I think it was from 1970 to 1978.
14 Q. That's eight years?
15 A. No. From '72 to '78.
16 Q. Six years?
17 A. Yes.
18 Q. In that regard, you were responsible
19 for sales of cigarettes throughout the United
20 States?
21 A. I was responsible for the operation of

Page 167

1 the corporation throughout the United States.
2 Q. Including sales, profits of the
3 company?
4 A. Pardon me, sir?
5 Q. Profits?
6 A. Profits.
7 Q. Approximately what was the volume of
8 sales in the United States of Philip Morris
9 cigarettes during that time period?
10 A. I don't remember that.
11 Q. More than \$10 billion units, more than
12 \$20 billion units, more than \$30 billion units?
13 MR. HAFETZ: Per year?
14 MR. EDELL: Per year.
15 A. I think it was something in the
16 neighborhood of \$100 billion, but my recollection
17 for figures is very bad. Don't take me -- I
18 don't remember it.
19 Q. A lot of people were smoking Philip
20 Morris cigarettes?
21 A. Yes, sir.

Page 168

1 Q. Did you tell any of them that there
2 might be DDT or TDE or any other pesticides in
3 the cigarettes they were smoking?
4 MR. HAFETZ: Objection.
5 A. Not to my recollection, no.
6 Q. Did you do anything to determine
7 whether there was any pesticides in the
8 cigarettes they were smoking?
9 A. I don't remember whether we did or
10 whether we didn't, but I know that if there was
11 it had to be a very small quantity.
12 Q. You don't know whether they did or
13 didn't do it, you don't know what the results
14 were, but you are confident it was only a small
15 amount?
16 A. That's correct.
17 Q. Because if it wasn't a small amount, it
18 might be potentially harmful to the smokers?
19 A. Because if it were more than a small
20 amount, my memory probably wouldn't be as vague
21 on it as it is.

Page 169

1 Q. Why would your memory again on whether
2 it -- what is a large amount?
3 A. It wasn't an important issue.
4 Q. It wasn't an important issue,
5 pesticides weren't?
6 A. That's my point, at that time it was
7 not an important issue, not to my recollection.
8 Q. It would only be an important issue, if
9 you helped make it an important issue, correct?
10 A. It would be an important issue maybe if
11 it were present in large quantities.
12 Q. What do you mean by large quantities?
13 A. I can't quantify it Mr. Edell.
14 Q. You don't know what you mean when you
15 say large quantity?
16 A. I can't quantify it, no.
17 Q. You are telling this jury that you
18 don't know whether there was research performed,
19 you don't know what the results were, but you
20 know that whatever those research results might
21 have been reflected that there was a small

<p>Page 170</p> <p>1 amount, if any?</p> <p>2 A. I am telling the jury that it was not</p> <p>3 an important subject at the time.</p> <p>4 Q. It wasn't an important subject for you,</p> <p>5 correct?</p> <p>6 A. I did not consider it an important</p> <p>7 subject for the public at large.</p> <p>8 Q. What are epidemiological studies?</p> <p>9 A. They are studies about the, I believe,</p> <p>10 they are studies about the health of the public.</p> <p>11 Q. And how many studies did Philip Morris</p> <p>12 fund, epidemiological studies did Philip Morris</p> <p>13 fund regarding the health of the public, as it</p> <p>14 relates to cigarette smoking, during the six</p> <p>15 years you were president of Philip Morris USA?</p> <p>16 A. I'm sorry, I can't quantify it.</p> <p>17 Q. Would it surprise you if there were</p> <p>18 none?</p> <p>19 MR. HAFETZ: Objection to form.</p> <p>20 Q. There were no studies funded by Philip</p> <p>21 Morris, no epidemiological studies?</p>	<p>Page 173</p> <p>1 that the study was done correctly, right?</p> <p>2 A. That is correct.</p> <p>3 Q. The way you make sure it is done</p> <p>4 correctly is you have it done to your</p> <p>5 specification, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. But you didn't have any done to your</p> <p>8 specifications, correct?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Because if you conducted it to your</p> <p>11 specifications, if you addressed all those</p> <p>12 problems and the results were harmful to the</p> <p>13 industry, in other words, it should a</p> <p>14 relationship, it would be hard to discredit that;</p> <p>15 isn't that correct?</p> <p>16 A. I have no knowledge of our wanting to</p> <p>17 discredit any studies. You are talking about</p> <p>18 epidemiological studies, I don't know what you</p> <p>19 are referring to, really.</p> <p>20 Q. It is sort of more a question of logic,</p> <p>21 Mr. Goldsmith. If you have, as president of</p>
<p>Page 171</p> <p>1 A. I don't know whether there were or not.</p> <p>2 Q. Wasn't a big issue?</p> <p>3 A. I just can restate what I answered. I</p> <p>4 said I don't know whether there were or not.</p> <p>5 Q. You seemed to suggest in your earlier</p> <p>6 answer, that if it was a big issue, you would</p> <p>7 remember it, right?</p> <p>8 A. Right.</p> <p>9 Q. I want to know whether or not the</p> <p>10 epidemiological studies were a big issue, when</p> <p>11 you were president from 1972 to 1978?</p> <p>12 A. They probably were, but not necessarily</p> <p>13 conducted by my company.</p> <p>14 Q. Why didn't you conduct them?</p> <p>15 A. I'm assuming they were not conducted</p> <p>16 because there were lots of others who did those</p> <p>17 studies. I really don't know enough about</p> <p>18 epidemiology studies to answer you correctly.</p> <p>19 Q. But it was an important health issue at</p> <p>20 that time, those epidemiological studies,</p> <p>21 correct?</p>	<p>Page 174</p> <p>1 Philip Morris, you hire the best experts in the</p> <p>2 world, which you could have done, correct?</p> <p>3 MR. HAFETZ: Move to strike. Objection.</p> <p>4 Q. Was there any restriction on you as to</p> <p>5 whether you could hire the best statisticians in</p> <p>6 the world?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. Certainly there was a lot of money at</p> <p>9 Philip Morris, very profitable business, the</p> <p>10 tobacco business, is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. You could have used that money to hire</p> <p>13 the best epidemiologists, the best statisticians</p> <p>14 in the world, correct?</p> <p>15 A. Correct.</p> <p>16 Q. You could told them I want you to do an</p> <p>17 epidemiological study regarding cigarette smoking</p> <p>18 and disease and I want you the address this</p> <p>19 issue, this issue, this issue, and that issue,</p> <p>20 all of the issues for control and to check the</p> <p>21 statistics and everything else; isn't that</p>
<p>Page 172</p> <p>1 MR. GARNICK: Objection to form.</p> <p>2 A. If the studies were correct, they could</p> <p>3 have been. But they were statistical in nature,</p> <p>4 I guess.</p> <p>5 Q. So is it your testimony that any</p> <p>6 statistical study is unimportant?</p> <p>7 A. That wasn't what I said.</p> <p>8 Q. Any statistical study respecting</p> <p>9 cigarette smoking and disease is unimportant?</p> <p>10 A. That's not what I said.</p> <p>11 Q. Oh, it could be important?</p> <p>12 A. Could be important.</p> <p>13 Q. Under what circumstance could it be</p> <p>14 important?</p> <p>15 A. Providing the statistics were correct</p> <p>16 and providing the sample was correct.</p> <p>17 Q. How do you ensure that the statistics</p> <p>18 are correct and the samples are correct?</p> <p>19 A. You would ask that question to a</p> <p>20 statistician. I'm not a statistician.</p> <p>21 Q. You would certainly have to make sure</p>	<p>Page 175</p> <p>1 correct?</p> <p>2 MR. HAFETZ: Objection to form.</p> <p>3 Q. You could have done that, couldn't you?</p> <p>4 A. Probably.</p> <p>5 Q. But you didn't, did you?</p> <p>6 MR. HAFETZ: Objection.</p> <p>7 A. To my knowledge, we did not.</p> <p>8 Q. But you do remember statements by</p> <p>9 yourself and others in the industry casting doubt</p> <p>10 on the statistical studies that were performed by</p> <p>11 others; is that correct?</p> <p>12 MR. GARNICK: Objection to form.</p> <p>13 A. I'm sure that must be correct.</p> <p>14 Q. And getting back to my original</p> <p>15 question, it would be awfully hard to cast doubt</p> <p>16 on the statistical studies, if you were the one</p> <p>17 who set them up and provided the protocol for</p> <p>18 conducting those studies, isn't that correct,</p> <p>19 Mr. Goldsmith?</p> <p>20 MR. GARNICK: Objection to form.</p> <p>21 A. I can't really answer whether it would</p>

<p>Page 176</p> <p>1 be difficult or not, because the people who set 2 it up could have set it up badly. I don't know 3 the answer to that, I really don't. 4 Q. You don't think that would be more 5 difficult? 6 A. Probably would be more difficult. 7 Q. And it is much easier to tear things 8 down than it is to build things, isn't that 9 true? 10 MR. HAFETZ: Objection to form. 11 A. Honestly, Mr. Edell, I don't know 12 anything about tearing down or building things 13 up. Sometimes people are more difficult to tear 14 things down than to build them up. 15 Q. If you don't do the biological research 16 yourself, you don't get results that might be 17 harmful to you, correct? 18 A. First, you gave me a hypothetical thing 19 about tearing things down and building things up, 20 what an awfully general question. 21 Q. Well, let's get more specific. Okay?</p>	<p>Page 179</p> <p>1 responsibilities, as vice-president research and 2 development and your reporting responsibilities 3 to Cliff Goldsmith, but he can call you anything 4 just about, right? 5 A. Absolutely. 6 Q. Do you have any idea what Mr. Cullman 7 was referring to when he talked about 8 Dr. Wakeham's responsibility for reporting to 9 you? 10 MR. HAFETZ: Objection. 11 A. No. I do not. 12 Q. Did you have any involvement with 13 respect to the issue of these epidemiological 14 studies? 15 MR. GARNICK: Objection to form. 16 Epidemiological studies or biological studies? 17 MR. EDELL: Statistical studies. 18 Q. We talked about statistical studies, 19 correct? 20 A. What kind of statistical studies, Mr. 21 Edell?</p>
<p>Page 177</p> <p>1 A. Okay. 2 Q. The reason you didn't do the biological 3 research is because you didn't want to have 4 results that might be inconsistent with your 5 statement it hasn't been proven that cigarette 6 smoking causes disease, correct? 7 A. No. I think that's your 8 interpretation. 9 Q. You are going to testify under oath 10 this that wasn't one of the reasons why you 11 didn't do biological research, sir? 12 MR. HAFETZ: Objection to the form. 13 A. I can't tell you why they were or why 14 they were not done. I can only tell you they 15 were not done. 16 Q. Let's see if we can figure out why they 17 weren't done, okay? 18 MR. HAFETZ: Move to strike. Just ask 19 the questions. 20 Q. Would you like to figure out why they 21 weren't done, Mr. Goldsmith?</p>	<p>Page 180</p> <p>1 Q. Studies of human beings, retrospective 2 and prospective, you know the difference between 3 the two? 4 A. Yes. 5 Q. Different types of approaches that 6 epidemiologists take to a certain cohort, that 7 cohort being a group of people exposed to a 8 certain something, in the context of this 9 litigation, it is cigarette smoke, and they 10 compare it to a similar cohort group of people 11 that weren't exposed to it. Those are the kinds 12 of statistical studies I'm talking about. Okay? 13 A. Okay. 14 Q. Weren't you involved with respect to 15 certain questions as to the kinds of studies that 16 had been performed and whether studies should be 17 performed by the industry? 18 A. I really don't recollect being 19 involved, no. 20 Q. Let me see if I can refresh your 21 memory. 13370.</p>
<p>Page 178</p> <p>1 MR. HAFETZ: Objection to form. Just 2 ask the question. 3 MR. EDELL: I did. 4 MR. HAFETZ: No, you asked him what he 5 likes. 6 Q. Would it be important to find out why 7 the research wasn't conducted, sir? 8 A. I can tell you that there is no 9 question, there is no need to do research, there 10 is no question that with the research done there 11 is information that smokers die sooner, but there 12 is no information available they die sooner 13 because they smoke. 14 Q. Show you a document marked as 13390, a 15 memorandum from Mr. Cullman to Dr. Wakeham, and 16 this again relates to biological research. It 17 shows a copy going to you. 18 On the bottom of it is February 24, 19 1970, it says confidential on top, it says all 20 these requests for special assignments, of 21 course, do not affect your regular</p>	<p>Page 181</p> <p>1 A. Mr. Edell, I want to say this at this 2 particular point, there was a small group that 3 managed Philip Morris, and everybody had their 4 own expertise, and my expertise was in the 5 technical manufacturing end of the business. It 6 really wasn't in this sort of area. 7 Q. When you say "this sort of area" are 8 you talking about cigarette smoking and health? 9 A. I'm talking about epidemiological 10 studies or anything of that nature. 11 Q. Well, you were involved in running the 12 company, correct? 13 A. Yes. I was. 14 Q. In 1970, 1969? 15 A. But I have my own specialty in which I 16 would have an important role. The smoking and 17 health area was not an area in which I was 18 playing an important role, other than as you 19 will -- other than as the product itself. 20 Q. Why would they put you on the Research 21 Liaison Committee to review the industry's</p>

Page 182

1 research if you were, in fact, as ignorant of the
2 subject as you claim to be?
3 MR. HAFETZ: Objection.
4 Q. I don't mean ignorant in a derogatory
5 way?
6 A. Claim to be though is derogatory.
7 Q. That is derogatory, you are right.
8 A. Thank you.
9 Q. Let me rephrase the question. Okay.
10 Can you give us any explanation as to why, given
11 your area of expertise, Philip Morris decided to
12 appoint you as the individual to serve as their
13 representative on the Research Liaison Committee,
14 the committee which was charged with a review of
15 the relevance of the industry's research to the
16 question of cigarette smoking and health?
17 MR. HAFETZ: Objection.
18 A. I think I probably was the best there
19 was available. It was not an area of my
20 expertise.
21 Q. Let me show you a document 13370. It

Page 183

1 is a memorandum from Dr. Wakeham to Mr. Cullman,
2 III, January 27, 1969.
3 This document sets forth the various
4 retro- various prospective studies,
5 epidemiological studies conducted to determine
6 whether there is a relationship between cigarette
7 smoking and disease, correct?
8 A. Correct.
9 Q. Are you familiar with any of these
10 studies?
11 A. I know the name of some of them, I know
12 the Hammond and Horn, that certainly sounds
13 familiar. Framingham does.
14 Q. You are aware of the Framingham study
15 being probably one of the largest epidemiological
16 studies ever conducted?
17 A. I'm aware of that.
18 Q. Clearly the results of that research
19 showed a relationship between cigarette smoking
20 and heart disease, correct?
21 A. Correct.

Page 184

1 Q. You never funded any research to
2 determine whether or not there was any flaws in
3 the Framingham epidemiological studies, correct?
4 MR. HAFETZ: May I just ask who you is,
5 Mr. Edell?
6 MR. EDELL: You as Clifford Goldsmith
7 individually or as the person who was running
8 Philip Morris USA.
9 A. What did you want for me to fund?
10 Q. Research to determine whether or not
11 the Framingham, Massachusetts, study, one of the
12 largest epidemiological studies ever conducted,
13 was incorrect in its conclusion that cigarette
14 smoking was related to heart disease?
15 MR. HAFETZ: Objection.
16 A. I think it would have been a daunting
17 task to do that.
18 Q. Sure. But you could do it with the
19 billions of dollars of profit that your tobacco
20 company made, correct?
21 MR. GARNICK: Objection.

Page 185

1 A. I don't know that. I can't answer.
2 Q. Is it fair to say, sir, and maybe
3 Mr. Weissman was wrong. My recollection of his
4 testimony was that in a given year net profits
5 were somewhere between seven and 10 percent of
6 gross sales; is that consistent with your
7 recollection?
8 A. I don't remember the figures, but if
9 Mr. Weissman said it, it must have been correct.
10 Q. And gross sales worldwide were
11 somewhere in the area of \$35 billion. That means
12 you had \$3 billion approximately every year to
13 use, if you needed to, to conduct this daunting
14 research that the Federal Government was funding,
15 correct?
16 MR. GARNICK: Objection to form.
17 MR. HAFETZ: What time frame, what
18 years?
19 MR. EDELL: The years you were
20 president, if it makes it easier for you.
21 A. I really --

Page 186

1 Q. Years you were on the board. When were
2 you on the board of directors?
3 A. I really wouldn't want to undertake a
4 study of that nature, I think it would have been
5 much too vast. I wouldn't have undertaken it.
6 Q. It is much easier to sit there and look
7 at the study and criticize it than actually
8 perform it, is that correct?
9 MR. HAFETZ: Objection. Argumentative.
10 A. I'm not aware of the fact that we
11 criticized it.
12 Q. Let's talk about any of the other
13 epidemiological studies, the half-million-person
14 study by Dr. Hammond. That is a very large
15 epidemiological study, correct? Sir?
16 A. I guess so.
17 Q. Would it have been daunting to try to
18 conduct a similar study to determine whether
19 Dr. Hammond was correct?
20 MR. GARNICK: Objection to form.
21 Q. Sir, correct in its conclusions with

Page 187

1 respect to cigarette smoking and its relationship
2 to disease in human beings?
3 A. I don't believe that we ever did any
4 studies of that nature. We just didn't do
5 epidemiological studies to agree or disagree with
6 any studies on the outside to my recollection.
7 Q. You didn't do any period, whether to
8 agree or disagree, correct?
9 A. To my recollection, that's correct.
10 Q. And you didn't do any in-house
11 biological research to agree or disagree,
12 correct?
13 A. We did work on animals if I recall.
14 Q. Not in-house?
15 A. We did it at INBIFO.
16 Q. Yeah, you did it in Europe because it
17 was difficult to get the results out.
18 MR. HAFETZ: Objection to form.
19 Q. Not difficult for you to get the
20 results, but difficult for the government,
21 difficult for people involved in litigation, to

<p>Page 188</p> <p>1 get the results in Germany, correct?</p> <p>2 MR. GARNICK: Objection to form.</p> <p>3 MR. HAFETZ: Objection to form.</p> <p>4 A. I don't, you are assuming it was done</p> <p>5 for that reason. I'm not agreeing with you.</p> <p>6 Q. Internal documents reflect that, I'm</p> <p>7 not making that assumption.</p> <p>8 MR. GARNICK: Move to strike.</p> <p>9 MR. HAFETZ: Move to strike.</p> <p>10 MR. EDELL: He asked me what the basis</p> <p>11 of my assumption was, I'm not assuming.</p> <p>12 A. I just I said you are assuming. I</p> <p>13 didn't ask you why.</p> <p>14 Q. All right. Well, you read the</p> <p>15 document. Did you not read the documents here</p> <p>16 this morning?</p> <p>17 A. Some of them, yes.</p> <p>18 Q. Were my assumptions any different than</p> <p>19 reflected in the documents that came from Philip</p> <p>20 Morris' files?</p> <p>21 MR. HAFETZ: Objection to form.</p>	<p>Page 191</p> <p>1 Q. Do you think it would have been a good</p> <p>2 idea to have performed a risk benefit study for</p> <p>3 smokers telling them that if we gave you a</p> <p>4 cigarette that was a little bit stronger, you</p> <p>5 might be reducing your chances of developing</p> <p>6 cancer --</p> <p>7 MR. GARNICK: Objection to form.</p> <p>8 Q. -- that the people who were exercising</p> <p>9 their own risk benefit analysis might have chosen</p> <p>10 the stronger tasting cigarette?</p> <p>11 MR. GARNICK: Objection to form.</p> <p>12 A. What you are doing is you are equating</p> <p>13 tumors on the skin of mice with human cancer and</p> <p>14 I can't make that, that would have been an</p> <p>15 implied warranty I wouldn't have been willing to</p> <p>16 make.</p> <p>17 Q. So you did it because you didn't want</p> <p>18 to mislead people; is that right?</p> <p>19 A. I didn't say that's not why we didn't,</p> <p>20 but I say it would have been misleading.</p> <p>21 Q. Just so the jury understands, in terms</p>
<p>Page 189</p> <p>1 A. I don't know.</p> <p>2 Q. You want to read them again?</p> <p>3 A. No. I don't want to read them again.</p> <p>4 Q. But Philip Morris didn't do any</p> <p>5 biological research in the United States in its</p> <p>6 own facilities, correct?</p> <p>7 A. Not in its own facilities, to my</p> <p>8 knowledge.</p> <p>9 Q. Didn't do any inhalation studies?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. Didn't do any mouse painting studies?</p> <p>12 A. Not that I know of.</p> <p>13 Q. Now, you are aware that the mouse</p> <p>14 painting studies reflected different degrees of</p> <p>15 carcinogenicity of different types of tobacco,</p> <p>16 correct?</p> <p>17 MR. HAFETZ: Objection to form.</p> <p>18 A. Yes.</p> <p>19 Q. For example, burly tobacco, tell the</p> <p>20 jury what burly tobacco is?</p> <p>21 A. It is tobacco grown in Kentucky and</p>	<p>Page 192</p> <p>1 of cancer research, laboratory animals and skin</p> <p>2 painting studies have been the yardstick for</p> <p>3 carcinogenicity for decades; is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. The mouse painting tests, for example,</p> <p>6 is widely accepted throughout the world as a test</p> <p>7 for carcinogenicity of various substances,</p> <p>8 correct?</p> <p>9 MR. GARNICK: Objection to form.</p> <p>10 A. Could you restate the question? I'm</p> <p>11 not sure I can respond.</p> <p>12 (The record was read by the reporter.)</p> <p>13 A. Carcinogenicity of various substances?</p> <p>14 Q. Yes. Of various substances that are</p> <p>15 either being sold to human beings or people,</p> <p>16 companies want to sell to human beings,</p> <p>17 pharmaceutical industry uses it, correct?</p> <p>18 A. Mouse painting?</p> <p>19 Q. Yes.</p> <p>20 A. I'm not aware of it.</p> <p>21 Q. They don't use animal studies for</p>
<p>Page 190</p> <p>1 Tennessee.</p> <p>2 Q. Pure burly tobacco smoke condensate</p> <p>3 produces very limited tumors in animals,</p> <p>4 correct?</p> <p>5 A. I don't remember exactly, but probably.</p> <p>6 Q. Was there a reason why Philip Morris</p> <p>7 didn't use just burly tobacco as opposed to using</p> <p>8 other kinds of tobacco that produced substantial</p> <p>9 numbers of tumors in laboratory animals?</p> <p>10 A. Yes.</p> <p>11 Q. Why?</p> <p>12 A. Taste.</p> <p>13 Q. Wouldn't taste as good?</p> <p>14 A. It would have blown your head off.</p> <p>15 Q. In other words, it didn't taste good?</p> <p>16 A. No, it was very strong.</p> <p>17 Q. Strong. Did you ever, in terms of, and</p> <p>18 correct me if my memory is wrong, but you were at</p> <p>19 the one at Philip Morris who wanted to do certain</p> <p>20 risk benefit studies, correct?</p> <p>21 A. That's correct.</p>	<p>Page 193</p> <p>1 carcinogenicity?</p> <p>2 A. I don't know.</p> <p>3 Q. Don't you think it would be appropriate</p> <p>4 for you to determine whether or not every other</p> <p>5 manufacturer of substances uses animal studies to</p> <p>6 determine whether or not their products might be</p> <p>7 carcinogenic in human beings?</p> <p>8 MR. GARNICK: Objection to form.</p> <p>9 Q. Before you decide it is not applicable</p> <p>10 to your product?</p> <p>11 MR. GARNICK: Objection to form.</p> <p>12 A. I remember a conversation with the head</p> <p>13 of Memorial Hospital during a luncheon, I just</p> <p>14 happen to remember a conversation, he said that</p> <p>15 the cancer on the skin of mice in his opinion</p> <p>16 just meant that when mice were painted with</p> <p>17 cigarette tar, they got cancer on their skin, but</p> <p>18 he could not equate it with humans.</p> <p>19 Q. You distinctly remember that</p> <p>20 conversation?</p> <p>21 A. I do.</p>

<p>Page 194</p> <p>1 Q. How about all of the communications 2 that you received over the years that reflected 3 that skin painting, mouse painting studies was 4 the yardstick to determine carcinogenicity in 5 human beings? 6 A. I really don't think that that was ever 7 really claimed. 8 Q. You are aware of research that was 9 being performed in Europe, correct? European 10 tobacco companies readily accepted mouse painting 11 studies as a barometer for determining 12 carcinogenicity, isn't that correct? 13 A. I wasn't aware of that. 14 Q. Did you have any contact with European 15 cigarette manufacturers? 16 A. Not in that -- first of all I don't 17 remember contact with them, and secondly, 18 certainly, not in this area. 19 Q. Let's talk about the people in research 20 and development at Philip Morris. Certainly, 21 Dr. Seligman knew substantially more than you did</p>	<p>Page 197</p> <p>1 the World Health Organization or every other 2 health organization in the entire world has 3 concluded that cigarette smoking causes disease 4 in human beings, you don't have to accept that 5 either, do you? 6 MR. HAFETZ: Objection to form and 7 objection. 8 Q. Do you, sir? 9 A. No. I don't have to accept it. 10 Q. You could keep blindly walking along 11 and saying I don't accept it; isn't that correct? 12 MR. HAFETZ: Objection to form. 13 Q. It is a free country, you are allowed 14 to, aren't you? 15 MR. HAFETZ: Objection to form. 16 A. It's a free country, you are correct. 17 Q. Yes. But you have to act responsibly, 18 don't you, Mr. Goldsmith? 19 MR. HAFETZ: Objection, form. 20 Q. As a company, selling a potentially 21 harmful substance to millions of Americans and</p>
<p>Page 195</p> <p>1 as to the applicability of mouse painting studies 2 respecting tobacco carcinogenicity, isn't that 3 correct? 4 A. Doctor who? 5 Q. Seligman. 6 A. He knew more than I did? 7 Q. Yes. 8 A. He had his own opinion, I don't know 9 what it was. 10 Q. His opinion was based upon training and 11 experience, correct? You have not had any formal 12 training with respect to animals studies, have 13 you? 14 A. No. Of course not. 15 Q. Dr. Seligman? 16 A. I don't know whether he has. 17 Q. What was his training? 18 A. He was a chemist. 19 Q. In that context, do you know whether he 20 any training with respect to the constituents of 21 cigarette smoke?</p>	<p>Page 198</p> <p>1 many more millions of people throughout the 2 world, correct? 3 MR. HAFETZ: Objection to form. 4 A. Yes. 5 Q. And the way to act responsibly is to 6 make judgments based upon the information that is 7 available; isn't that correct, or do the studies 8 yourself; isn't that correct, sir? 9 MR. HAFETZ: Objection to form. 10 A. I am not really willing to sit here and 11 tell you exactly how one acts responsibly. I 12 think that's a long and drawn out discussion. 13 Q. We have all the time in the world, 14 Mr. Goldsmith. 15 A. I don't want to go into that at this 16 stage of the game. You are telling me what you 17 feel is acting responsibly, so be it. 18 Q. I show you a document marked 19 Plaintiff's Exhibit 13535. You recognize this to 20 be the letterhead of Philip Morris? 21 A. Yes. It is.</p>
<p>Page 196</p> <p>1 A. No. I don't. 2 Q. Why would you hire him if he didn't 3 have any experience in that regard? 4 MR. HAFETZ: Objection. Form. 5 Q. Sir? 6 A. He gained the experience through the 7 years he was employed there. He did not have the 8 experience when he was hired, to my knowledge, he 9 didn't. 10 Q. Do you recall him telling you that 11 mouse skin painting is the only recognized method 12 of bioassay for tobacco smoke carcinogenicity? 13 A. No. I don't recall it. But he could 14 have easily said it. 15 Q. You could have rejected that out of 16 hand, correct? 17 A. I would have listened to him, but just 18 because he said it, doesn't mean I would have 19 accepted it. 20 Q. Just because the American Medical 21 Association says it or the Federal Government or</p>	<p>Page 199</p> <p>1 Q. It is a memorandum from R. B. Seligman, 2 to C.H. Goldsmith. Who is that? Is that you? 3 A. That's me. 4 Q. On the first page of this document, 5 Dr. Seligman summarizes its content, correct? 6 A. What's the date of the document? 7 Q. I didn't prepare this. I will see if 8 we can try to figure it out from the content of 9 the document. 10 Maybe Mr. Garnick can help us, one of 11 the Philip Morris lawyers who might be more 12 familiar with the document than I; but I don't 13 really know what it is off the top of my head. 14 Can you help us out, Mr. Garnick? 15 MR. GARNICK: Do you have a copy of the 16 document? 17 MR. EDELL: Yeah, sure. 18 MR. GARNICK: I'm sure we can get it 19 from the information we have. 20 THE WITNESS: No. Forget it. It 21 doesn't matter.</p>

Page 200

1 Q. Doesn't matter?
2 A. No. Doesn't matter.
3 Q. Why doesn't it matter?
4 A. I want to proceed. You don't have it,
5 so I will do without it.
6 Q. First page identifies Mr. Seligman's
7 memorandum to you; is that correct?
8 A. Yes.
9 Q. He starts out by telling you that mouse
10 skin painting is the only recognized method of
11 bioassay for tobacco smoke carcinogenicity; is
12 that correct?
13 A. Well, that is what Dr. Seligman says at
14 that time, but at a later time, I know that there
15 were inhalation studies which were considered to
16 be far more accepted than mouse skin painting.
17 Q. When was that point in time?
18 A. I have no idea.
19 Q. Was it last year, ten years ago, twenty
20 years ago, you have no idea?
21 A. Twenty years ago, more so than last

Page 201

1 year.
2 Q. What's that?
3 A. More so than last year, it was 20 years
4 ago. That's why I was wondering about the date,
5 but it is not that important. It doesn't
6 matter. I'm saying to you at a later time,
7 inhalation studies were considered to be more
8 important than mouse-skin painting.
9 Q. Did they replace mouse skin painting
10 studies?
11 A. I think I recollect if they didn't
12 replace it, they were certainly considered to be
13 far more important.
14 Q. Did Philip Morris fund any animal
15 inhalation studies?
16 A. Yes. We did at INBIFO.
17 Q. Did the results of those studies
18 reflect that animals exposed to smoke developed
19 cancer?
20 A. To my knowledge, no, they did not.
21 Q. Certainly, if the study did reflect

Page 202

1 that the animals developed some cancer that would
2 have been an important result, correct?
3 A. It would have been something worthwhile
4 considering, yes.
5 Q. Can you tell the jury what Harrogat is?
6 A. What.
7 Q. H-a-r-r-o-g-a-t, is that a laboratory
8 related to the Tobacco Research Council in
9 Europe? Does that refresh your memory?
10 A. No.
11 Q. Have you ever heard of the Tobacco
12 Research Council in Europe?
13 A. No. I must have heard of it, but I
14 don't remember it.
15 Q. I'm going to show you a document which
16 we have marked as 13926. It is a memorandum from
17 Dr. Carpenter, Philip Morris Research and
18 Development.
19 A. Uh-huh.
20 Q. You know Dr. Carpenter?
21 A. Yes.

Page 203

1 Q. To a Dr. Osdene?
2 A. Yes.
3 Q. And it relates to a meeting that
4 Dr. Carpenter had with a John Whitehead of the
5 Tobacco Research Council, UK?
6 A. Right. Now, I remember, Harrogat was
7 the work done by the British industry.
8 Q. Exactly. You see in this November 6,
9 1972 memo, Dr. Whitehead informs Dr. Carpenter
10 who informs Dr. Osdene that Harrogat has been
11 doing inhalation work for several years on a more
12 limited scale than Dr. Dentenwill, you remember I
13 referred to Dr. Dentenwill earlier, they found
14 only one tumor which was termed a squamous cell
15 carcinoma. Do you see that?
16 A. Yes.
17 Q. Dr. Whitehead seemed to feel that large
18 scale inhalation work was very much like skin
19 painting. In that it was being discontinued. Do
20 you see that?
21 A. That's what it says here, yes.

Page 204

1 Q. If it was such a valuable tool, why do
2 you think it was being discontinued?
3 A. I haven't got the faintest idea.
4 Q. What, if anything, did Philip Morris do
5 with the results that were being conveyed to them
6 regarding these animal studies conducted by their
7 colleagues abroad that reflected, inhalation
8 studies, that reflected squamous cell carcinoma?
9 MR. GARNICK: Objection to form.
10 A. I have no recollection of it, and as
11 far as I read here, it was just one animal.
12 Q. Out of how many?
13 A. I have no idea.
14 Q. If there were two, it would be 50
15 percent?
16 A. If there were two, it would be 50
17 percent.
18 Q. We don't know. So we don't know how
19 important or unimportant that number one is, do
20 we?
21 A. You are correct, Mr. Edell.

Page 205

1 Q. If there were ten animals and one of
2 them developed squamous cell carcinoma, that is
3 10 percent, correct?
4 A. That's correct.
5 Q. If 10 percent of cigarette smokers
6 develop lung cancer, how many Americans is that
7 in the United States?
8 A. My math isn't good enough to figure it.
9 Q. Certainly more than several million,
10 correct?
11 A. That's correct.
12 Q. So that number could be very important,
13 couldn't it?
14 A. I don't know.
15 Q. Okay. See if I can pull up another
16 document that relates to these animal studies,
17 13367, again, we're talking about inhalation
18 studies that you felt were more important than
19 the animal painting studies.
20 I'm going to show you a document marked
21 13367, it is a memorandum from Dr. Wakeham to C.

<p>Page 206</p> <p>1 H. Goldsmith, January 7, 1969. I must have 2 pronounced the last name incorrectly in the 3 earlier questions, I thought it was 4 Leuchtenberger, how would you pronounce this? 5 A. Leuchtenberger. 6 Q. If I had said Leuchtenberger, would you 7 have recognized the name? 8 A. I have no idea who he is. 9 Q. Let's see if we read this document and 10 it refreshes your memory that Cecile and Rudolph 11 Leuchtenberger of the Swiss Institute for 12 Experimental Cancer Research had for many years 13 followed two lines of investigation regarding the 14 effects of cigarette smoke, one is the effects of 15 smoke inhalation leading to tissue changes in the 16 lungs of mice and the other relates to the kidney 17 tissues and lung organ cultures? 18 MR. HAFETZ: Is there a question? 19 Q. Yes. I asked to see if it would 20 refresh his memory. Do you want it read back? 21 A. Do I remember this?</p>	<p>Page 209</p> <p>1 MR. HAFETZ: Objection to form and 2 objection. 3 MR. EDELL: Sir? 4 A. I didn't quite follow you. What are 5 you saying with the chain of command? 6 Q. Apparently Mr. Cullman thought that he 7 thought the normal chain of command would require 8 Dr. Wakeham reporting to you on certain issues, 9 correct, instead of reporting directly to him? 10 MR. HAFETZ: Objection to form. 11 A. Doesn't say that in this memo. 12 Q. No. But it says that in one of the 13 earlier documents we looked at, you don't 14 remember that? 15 A. I remember the memo very well, I think 16 maybe he just didn't want to hurt my feelings. I 17 don't know why he said it. 18 Q. May be. 19 A. But I do not remember the 20 Leuchtenbergers. 21 Q. It would have been a major event, a</p>
<p>Page 207</p> <p>1 MR. HAFETZ: Are you asking if that is 2 what the document says or if it refreshes his 3 memory. 4 MR. EDELL: I asked him to review the 5 document to see if it refreshed his memory with 6 respect to the Leuchtenbergers performing 7 inhalation studies respecting cigarette smoking 8 and cancer? 9 A. It does not. 10 Q. Did you read the whole thing? 11 A. No. I did not. I don't remember the 12 name. I don't remember that they did work for 13 us. 14 Q. I understand what you are saying, but 15 we as lawyers are entitled to ask you to review 16 things to see whether or not in its totality it 17 jogs your memory a little bit, all right? 18 A. Oh, sure. 19 Q. You said earlier, so maybe we can just 20 direct your attention to the specific portion, 21 the Leuchtenbergers concluded in the abstract of</p>	<p>Page 210</p> <p>1 study, an inhalation study that reflected an 2 increased incidence in tumors in the animals 3 exposed to cigarette smoke versus those not 4 exposed to cigarette smoke, correct? 5 A. Mr. Edell, I remember a tremendous 6 amount of work being done on the proper kind of 7 smoking machine and what was the proper kind of 8 smoking machine and whether the Leuchtenbergers 9 in 1969 had one that we approved of or didn't 10 approve of, I have no recollection. 11 But the whole methodology of how you do 12 this sort of work I'm sure is of importance as 13 well. 14 Q. Sure. Anything wrong with the 15 Leuchtenbergers -- 16 A. I don't know. It is quite possible 17 that the Leuchtenberger mice smoked in a manner 18 that was totally unnatural. I don't know the 19 answer to that. 20 Q. Is there anything that reflects that in 21 Dr. Wakeham's memoranda?</p>
<p>Page 208</p> <p>1 their paper, a major point, this is a big issue, 2 mice inhaling fresh, whole smoke, or its gaseous 3 phase for a year or longer displayed a broader 4 spectrum and a higher frequency of tumors than 5 controls of the same strain. These findings 6 suggest that inhalation of fresh cigarette smoke 7 may enhance carcinogenesis in mice. Do you see 8 that, sir? 9 A. Yes. 10 Q. Is this the type of inhalation study 11 that you said is better than the mouse painting 12 study? 13 MR. HAFETZ: Objection to form. 14 Q. Sir? 15 A. Yes. 16 Q. And these results were being sent to 17 you by Dr. Wakeham, I guess, reporting consistent 18 with his understanding and, certainly, 19 Mr. Cullman's understanding as to the normal 20 chain of command, if you will, at Philip Morris, 21 correct?</p>	<p>Page 211</p> <p>1 A. You can't tell from that memorandum. 2 Q. Is there anything in Dr. -- 3 A. No, not in the memorandum, no. 4 Q. And you have no independent 5 recollection, so you have no idea whether there 6 were any flaws in the Leuchtenberger's research, 7 correct? 8 MR. HAFETZ: Objection. 9 A. No. No recollection. 10 MR. EDELL: Why don't we take a short 11 break? What time are we going to counsel? 12 MR. HAFETZ: We're going to break at 13 three. 14 VIDEO OPERATOR: We're going off the 15 record the time is 2:49 p.m. 16 (Discussion off the record.) 17 MR. EDELL: I mean the representation 18 was made to us that -- 19 MR. HAFETZ: Friday we communicated or 20 Thursday or Friday we talked. I believe on 21 Thursday or Friday we communicated to your</p>

<p>Page 212</p> <p>1 office. 2 MR. EDELL: That was communicated. 3 Right, and we took you at your word. 4 MR. HAFETZ: That we wished to break at 5 3 o'clock today. 6 MR. EDELL: I was led to believe that 7 this gentleman, because of his age and health was 8 too frail to continue any more than from 10 to 3 9 o'clock. 10 MR. HAFETZ: I don't know if the word 11 frail was used, but because of his age and 12 condition. 13 MR. EDELL: Is that right, sir? 14 THE WITNESS: Don't you see that I am 15 frail? 16 MR. EDELL: No. I don't see that you 17 are frail. I would be very happy to be in your 18 shape at 79, if I were to make it 79. 19 THE WITNESS: I hope you do. 20 MR. EDELL: I want to find out whether 21 or not it is a, very simply, it is a means by</p>	<p>Page 215</p> <p>1 MR. HAFETZ: We thought we had an 2 understanding. In fact, counsel have made other 3 appointments, including me, for this afternoon, 4 based upon what I thought was a representation 5 and agreement and an understanding between 6 lawyers that the deposition would not go beyond 3 7 o'clock. 8 It was not subject to your questioning 9 the witness at the deposition. It was an 10 agreement period. If I am incorrect on that, 11 please say so, and tell me who -- 12 MR. EDELL: I will. 13 MR. HAFETZ: Excuse me. May I finish? 14 MR. EDELL: I thought you invited me to 15 say something. 16 MR. HAFETZ: May I finish? 17 MR. EDELL: Yes, you certainly may. 18 MR. HAFETZ: If not, I'm asking you who 19 in your office said it was subject to a condition 20 of Mr. Goldsmith. I would like to know that. 21 MR. EDELL: You know, I forgot, sir,</p>
<p>Page 213</p> <p>1 which to breakup our examination or whether or 2 not it -- 3 MR. HAFETZ: Wait a second. 4 MR. EDELL: Let me finish. 5 MR. HAFETZ: Wait a second. Wait a 6 second. Are you talking lawyer to lawyer? 7 MR. EDELL: I'm asking a question. 8 MR. HAFETZ: I'm interrupting the 9 question. 10 MR. EDELL: I'm questioning the 11 veracity of your representation, counsel. 12 MR. HAFETZ: We had an understanding. I 13 thought, with your office. 14 MR. EDELL: Based on representation. 15 MR. HAFETZ: Based upon representation 16 that went to the age of the witness, that we 17 would break at three. I understood you were in 18 agreement with respect to that. If you are in 19 agreement, let's stop at 3 o'clock. If we are 20 not in agreement, you should have said so last 21 Thursday.</p>	<p>Page 216</p> <p>1 you are a New York attorney, therefore, we should 2 have asked you whether or not your representation 3 was accurate, upon which we relied. 4 Certainly our actions assumed that you 5 were being honest and forthright, and any 6 agreement by us to take any action or inaction, 7 based upon a representation by an attorney 8 assumes, until proven otherwise, that the 9 attorney is being honest with us. Okay. 10 So, yes, there was a condition 11 precedent to our -- let me finish. There was a 12 condition precedent to our agreeing to 13 accommodate this witness, and that was the truth 14 of your statements. 15 MR. HAFETZ: I tell you what 16 Mr. Edelman, I am from New York, you are from 17 Maryland. 18 MR. EDELL: I'm not from Maryland. 19 MR. HAFETZ: Wherever you are from, 20 please do not impugn the veracity of counsel. 21 MR. EDELL: You impugned it yourself.</p>
<p>Page 214</p> <p>1 MR. EDELL: No, counsel. We were in 2 agreement before I saw Mr. Goldsmith and before I 3 spent six hours with Mr. Goldsmith. 4 We were in agreement based upon what we 5 believed to be a good faith representation that 6 because of his age, he was not in sufficient 7 health to withstand the rigors of a deposition 8 that would go longer than 3 o'clock. 9 MR. HAFETZ: We made a good faith 10 representation to you. 11 MR. EDELL: I let you finish. I let 12 you finish, counsel, let me finish. I'm now 13 exploring the veracity of that representation 14 upon which you are relying, so that I can go to 15 the court, if necessary, and file an application 16 with respect to what we thought was a good faith 17 representation. 18 MR. HAFETZ: You want to go get on the 19 phone and call the court now? 20 MR. EDELL: Not until I speak with Mr. 21 Goldsmith.</p>	<p>Page 217</p> <p>1 MR. HAFETZ: May I finish, please? 2 MR. EDELL: Don't raise your voice. 3 MR. HAFETZ: This deposition will end at 4 3 o'clock, pursuant, if you wish to continue it 5 beyond three, get on the telephone now and call 6 the judge. 7 MR. EDELL: After I ask the witness 8 some questions. Okay. It is not 3 o'clock now. 9 MR. HAFETZ: I will represent based upon 10 the understanding we had with your office, last 11 Thursday, I have made other commitments and 12 appointments this afternoon. No one advised me 13 from your office that continuation beyond 3 14 o'clock was subject to questioning of the 15 witness. Your office said it was depending upon 16 testing the bona fides of any representation that 17 was made. 18 Your office stated that the deposition 19 would end at 3 o'clock period. If you now are 20 withdrawing the agreement, please advise and we 21 can judge accordingly how to deal with you,</p>

<p>Page 218</p> <p>1 Mr. Edelman. 2 MR. EDELL: Edell. 3 MR. HAFETZ: Mr. Edelman, obviously we 4 can't rely on your word. 5 MR. EDELL: You can. 6 MR. HAFETZ: Then we end at 3 o'clock. 7 MR. EDELL: I'm not going to do this 8 any more, until I establish a record. 9 Q. Mr. Goldsmith are you under a doctor's 10 care? 11 A. I don't think that is any of your 12 business. It has nothing to do with this. 13 Q. It has to do with whether or not you 14 are physically able to stand the rigors of a 15 regular day of deposition? 16 A. Mr. Edell, when you are 79 years old, 17 you will find out that you see doctors of all 18 kinds, colors or descriptions, a number of times 19 each year. If you call that being under a 20 doctor's care, I am under a doctor's care. 21 Q. Let me ask you a more pertinent</p>	<p>Page 221</p> <p>1 Furthermore, with regard to any future 2 understanding with your office, we will be extra 3 careful now that we know the manner in which you 4 are dealing with representations you have made, 5 sir. 6 MR. EDELL: You should be aware from 7 now on whatever representations you make will be 8 challenged as to their veracity. You should be 9 very careful in exactly what language you use. 10 MR. HAFETZ: As will yours, too, as 11 demonstrated by your conduct in the last 15 12 minutes, based upon the backing off of a 13 representation your office made last week. 14 MR. EDELL: 3 o'clock, we're over. No 15 backing off. 16 MR. HAFETZ: You want the last word, you 17 can have the last word, Mr. Edelman -- Mr. Edell 18 if that's what you are trying to say. 19 MR. EDELL: Edell. 20 MR. HAFETZ: Nonetheless, you have 21 backed off of an understanding that you had last</p>
<p>Page 219</p> <p>1 question, okay? 2 A. Okay. 3 Q. Is there any reason why you can't sit 4 for a deposition for more than six hours? 5 A. Well, I think I certainly am not as 6 sharp at age 79 after six hours of your very 7 competent interrogation than I was when I 8 started. 9 Q. I'm not as sharp as I was when I was 10 35. I'll take that as a given, but I still 11 usually go for eight to twelve hours a day. I'm 12 asking you for a candid answer. 13 A. I gave it to you. 14 Q. Are you unable, do you feel that you 15 are unable -- 16 MR. HAFETZ: I want a continuing line of 17 objection to this. 18 MR. EDELL: You have it. 19 Q. Do you feel as if you are unable, 20 physically unable, mentally unable, to go through 21 a full day of depositions.</p>	<p>Page 222</p> <p>1 week. Let the record be very clear on that. 2 MR. EDELL: I don't have any idea what 3 you are saying, you can say what you want. 4 MR. HAFETZ: You have every idea what 5 you are saying, sir, you made a representation 6 and you tried get out of it. 7 MR. EDELL: That we would stop at 3 8 o'clock. Is it 3 o'clock, counsel? Is it, yes 9 or no? 10 MR. HAFETZ: It is 3 o'clock, subject 11 only to your testing and trying to back off of 12 the representations. 13 Okay, Mr. Edell, we stand warned by 14 your conduct. 15 MR. EDELL: Have a good day, sir. 16 THE WITNESS: Thank you. You, too. 17 MR. HAFETZ: Are you in a position to 18 fix a date for the continuation. 19 MR. EDELL: We will do it on the 20 record, so there is no question as to what was 21 said by whom.</p>
<p>Page 220</p> <p>1 A. It's not a question of being unable, 2 but maybe less qualified. 3 Q. Less sharp? 4 A. That's right. 5 MR. EDELL: I will make my application 6 to the court, counsel. It is 3 o'clock, we will 7 honor our representation, despite the 8 misrepresentation made. 9 MR. HAFETZ: I want to correct the 10 record right now. I don't like to have my 11 veracity impugned by anyone, including yourself. 12 No misrepresentation was made. I ask 13 you to behave yourself as a gentleman and a 14 lawyer and not make an ad homonym attack on the 15 veracity of another lawyer. 16 Maybe because you are piqued because 17 your office failed to follow proper questioning 18 or proper discussion with regard to whether the 19 deposition would be adjourned, don't take that 20 for any excuse perhaps for lack of competence by 21 your office to make any attack.</p>	<p>Page 223</p> <p>1 VIDEO OPERATOR: You want this on the 2 video record? 3 MR. EDELL: No. That's not necessary, 4 unless we need the intonation, the decibel 5 level. 6 Next week okay? 7 MR. HAFETZ: No. 8 THE WITNESS: No. I don't think so. 9 THE WITNESS: This week is dead as far 10 as I'm concerned. 11 MR. HAFETZ: We have in mind October 12 27. Are you guys going to go two days with Len 13 Koslowski? 14 MR. GARNICK: I have no idea. 15 MR. EDELL: How about the 28th? 16 THE WITNESS: Wednesday is okay. 17 MR. EDELL: How about Thursday, the 18 29th? 19 THE WITNESS: Okay with me. 20 MR. EDELL: Okay. 21 MR. HAFETZ: I believe it is okay. Make</p>

<p>Page 224</p> <p>1 that subject to notifying your office tomorrow. 2 I don't have my full calendar for October. 3 THE WITNESS: 29th is okay to me. 4 MR. HAFETZ: Did you just hear me, 5 Mr. Edell? Assuming my calendar is clear for the 6 29th. 7 I can, if you want to go off the record 8 a minute. 9 MR. EDELL: Let's do it, so we can just 10 nail it down. 11 THE WITNESS: Let's do it early. 12 MR. EDELL: Fine, we can go any time 13 you want. I prefer the morning to the 14 afternoon. Seriously, I do. 15 (Discussion off the record.) 16 MR. HAFETZ: The 29th is not good. How 17 is the 26th? 18 THE WITNESS: October? 19 MR. EDELL: I think the 26th was a 20 deposition. 30th? 21 MR. HAFETZ: 30th is -- we could start</p>	<p>Page 227</p> <p>1 INDEX OF EXAMINATION 2 BY MR. EDELL..... 4 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21</p>
<p>Page 225</p> <p>1 later. The 2nd? 2 MR. EDELL: The 2nd, I have Harris 3 deposition on the 3rd. 4 MR. HAFETZ: Going to be away the rest 5 of that week into the middle of the following 6 week. 7 MR. EDELL: How about Monday the 9th? 8 MR. HAFETZ: I will be getting back 9 sometime the 9th or the 10th. 10 MR. EDELL: 10th is fine. 11 MR. HAFETZ: I can do it the 11th. The 12 11 or 12th. 13 MR. EDELL: You want to do it in D.C.? 14 THE WITNESS: I certainly prefer not 15 to. 16 MR. GARNICK: You can't do it on the 17 28th? You want to push it off to the 26th? 18 MR. EDELL: That's your deposition of 19 Koslowski. 20 MR. GARNICK: What about the week of the 21 19th? I got Miller on the 21st, you guys want to</p>	<p>Page 228</p> <p>1 STATE OF MARYLAND SS: 2 I, E. D. SMITH, RPR-CRR, a Notary Public 3 of the State of Maryland, do hereby certify that 4 the within named, CLIFFORD GOLDSMITH, personally 5 appeared before me at the time and place herein 6 set out, and after having been duly sworn by me, 7 was interrogated by counsel. 8 I further certify that the examination was 9 recorded stenographically by me and this 10 transcript is a true record of the proceedings. 11 I further certify that the stipulations 12 contained herein were entered into by counsel in 13 my presence. 14 I further certify that I am not of counsel 15 to any of the parties, nor an employee of 16 counsel, nor related to any of the parties, nor in 17 any way interested in the outcome of this action. 18 As witness my hand and notarial seal this 19 8th day of October, 1998. 20 My commission expires 21 November 1, 1998 Notary Public</p>
<p>Page 226</p> <p>1 push it off to the 20th or the 23rd? 2 MR. EDELL: 20th is fine for me. 3 MR. GARNICK: 20th is fine with me. 4 MR. HAFETZ: Hold on a second. 5 (Discussion off the record.) 6 MR. HAFETZ: The 20th at nine o'clock. 7 MR. EDELL: You got it. 8 (Examination concluded -- 3:05 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21</p>	